

BEFORE THE  
ILLINOIS COMMERCE COMMISSION

SANTANNA NATURAL GAS CORPORATION )  
d/b/a SANTANNA ENERGY SERVICES )  
Application for Certificate of ) Docket Number  
Service Authority under Section 19-110) 02-0441  
of the Public Utilities Act. )

Springfield, Illinois  
August 28, 2002

Met, pursuant to notice, at 9:00 a.m.

BEFORE:

MR. JOHN ALBERS, Administrative Law Judge

APPEARANCES:

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MR. KARL G. LEINBERGER  
Crowley, Barrett & Karaba, Ltd.  
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Chicago, Illinois 60603-1895

(Appearing on behalf of Santanna  
Natural Gas Corporation)

MR. ANDREW G. HUCKMAN  
160 North LaSalle Street  
Chicago, Illinois 60601

MS. LINDA M. BUELL  
527 East Capitol Avenue  
Springfield, Illinois 62701

(Appearing on behalf of the Staff of  
the Illinois Commerce Commission)

1 APPEARANCES: (CONT'D)

2 MS. KARIN M. NORINGTON-REAVES  
3 208 South LaSalle Street, Suite 1760  
Chicago, Illinois 60604

4 (Appearing on behalf of the Citizens  
5 Utility Board)

6 MR. MARK G. KAMINSKI  
7 MS. JANICE DALE  
Office of the Attorney General  
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8 (Appearing on behalf of the Illinois  
9 Attorney General's Office)

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21 SULLIVAN REPORTING COMPANY

22 By Jami Tepker, Reporter, CSR# 084-003591  
& Carla Boehl, Reporter, CSR #084-002710

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PROCEEDINGS

JUDGE ALBERS: By the authority vested in me by the Illinois Commerce Commission, I now call Docket Number 02-0441. This docket concerns an application by Santanna Natural Gas Corporation d/b/a Santanna Energy Services. The Applicant's seeking a Certificate of Service Authority under Section 19-110 of the Act.

May I have the appearances for the record, please.

MR. MARKOFF: Paul Markoff, M-a-r-k-o-f-f, 20 South Clark Street, Suite 2310, Chicago, Illinois 60603. (312) 726-2468. I'm counsel for Santanna Natural Gas Corporation.

MR. HUCKMAN: For the Staff of the Illinois Commerce Commission, Andrew G. Huckman, H-u-c-k-m-a-n, 160 North LaSalle Street, Chicago, Illinois 60601. (312) 793-3305.

MS. BUELL: Also appearing on behalf of the Staff of the Illinois Commerce Commission, Linda M. Buell, 527 East Capitol Avenue, Springfield, Illinois 62701. My telephone number is (217)

1 557-1142.

2 MS. NORINGTON-REAVES: Appearing on behalf of  
3 the Citizens Utility Board, Karin, K-a-r-i-n,  
4 Norington, N-o-r-i-n-g-t-o-n, Reaves, R-e-a-v, as in  
5 Victor, e-s, 208 South LaSalle Street, Suite 1760,  
6 Chicago, 60604. Phone number, (312) 263-4282.

7 MR. KAMINSKI: Appearing on behalf of the  
8 People of the State of Illinois, Mark Kaminski of  
9 the Illinois Attorney General's Office, 100 West  
10 Randolph Street, Chicago, Illinois 60601. Phone  
11 number, (312) 814-8326.

12 MS. DALE: Also appearing on behalf of the  
13 People of the State of Illinois, Janice Dale, Office  
14 of the Illinois Attorney General, 100 West Randolph  
15 Street, Chicago, Illinois 60601. Telephone, (312)  
16 814-3736.

17 JUDGE ALBERS: Thank you.

18 Are there any others wishing to enter an  
19 appearance? Let the record show no response.

20 As far as preliminary matters, the only  
21 outstanding motions I'm aware of are the two motions  
22 to strike filed by Santanna. I'm not a hundred

1       percent sure what you mean by conducting voir dire  
2       of the witnesses.

3                You just want to cross them on their  
4       experience and background? You can do that after  
5       the testimony is offered and before it's admitted,  
6       and you can make any motions to strike that you see  
7       fit.

8               MR. MARKOFF: Having not been through this  
9       procedure before, I'm not sure -- I thought when it  
10      was offered it was already in. So it might have  
11      been too late by then to --

12              JUDGE ALBERS: No. Each party will offer their  
13      testimony in the record, and then after hearing  
14      objections to it, then I would admit or not admit  
15      it.

16              MR. MARKOFF: Okay. I think that the  
17      discussions with Miss Norington -- and I think Mr.  
18      Kaminski's amenable to this, but the idea would be  
19      to conduct a mini cross to determine the  
20      qualifications to render opinion witnesses.

21                      And that would obviously have to be at  
22      some point before the testimony is admitted as

1 evidence or obviously that would be the alternative  
2 to the motion to strike stating that they haven't  
3 already stated qualifications. So I'm not sure how  
4 you would prefer to proceed on that.

5 JUDGE ALBERS: I think we're on the same page.

6 MR. MARKOFF: Okay.

7 JUDGE ALBERS: Once they would offer their  
8 testimony, before admission, before they're actually  
9 admitted by saying the magic words.

10 MR. MARKOFF: Okay.

11 JUDGE ALBERS: You can conduct your cross. And  
12 if the first part of your cross wants to be  
13 questions about their background and experience,  
14 that's fine. And if before you go any further you  
15 want to make a motion to strike, that's fine. I'll  
16 rule on that. Whatever the outcome, we'll go from  
17 there.

18 MR. MARKOFF: Okay. Thank you.

19 JUDGE ALBERS: Any other preliminary matters?

20 MS. DALE: Yes, Your Honor. A matter  
21 concerning discovery.

22 Yesterday we received from counsel for



1 Santanna in response to our motion to compel in  
2 response to your ruling on Monday a CD-ROM disk  
3 containing a customer report log. This CD-ROM  
4 contains over 2,000 pages. We received it yesterday  
5 afternoon at about somewhere between 1:30 and 2:00.

6 Needless to say, we have not had a chance  
7 to review this log. It's massive. And it was, you  
8 know, produced in the 24 hours between when you  
9 ordered it and when we picked it up. We just  
10 haven't had a chance to look at it.

11 We would like to ask -- the People would  
12 like to ask that we be given permission to review  
13 this log and file a summary of it and enter it as a  
14 late-filed exhibit. Barring that, in the  
15 alternative we would ask to be able to bring Mr.  
16 Gatlin back and cross-examine him on it because, as  
17 I say, it really is quite massive.

18 JUDGE ALBERS: I know I have some concerns just  
19 from a practical perspective about that. There may  
20 be some other objections from others.

21 MR. MARKOFF: Santanna certainly objects. It  
22 was produced when it was ordered, and we had stated

1       that this information was massive. The  
2       cross-examination of Mr. Gatlin on it would be  
3       worthless because he had nothing to do with the  
4       creation of it. Since it's a customer-service log,  
5       it's obviously created by the customer-service  
6       people.

7               So I'm not sure what that purpose would  
8       serve. I don't know if the People have reviewed it  
9       at all and -- or whether they have shown any  
10      relevance of it whatsoever to this proceeding.

11             MS. DALE: Well, Your Honor, in response to  
12      that I would say that the Company is offering only  
13      one witness, Mr. Gatlin. And I believe that any  
14      responses to discovery that the Company is offering  
15      in this case, it has to be assumed that Mr. Gatlin  
16      has knowledge of them because the Company isn't  
17      offering anyone else. They're saying he's the  
18      expert on anything and everything you may ask him  
19      about. And I reiterate my original request.

20             MS. NORINGTON-REAVES: Your Honor, if I might  
21      weigh in.

22             We had an opportunity to briefly review the

1 document at about somewhere between midnight and  
2 ten o'clock this morning. As Miss Dale said, the  
3 document contains approximately, well, it's over  
4 2,000 pages. One document within the disk is  
5 essentially a log from NICOR's customer calls,  
6 essentially. There's approximately two entries per  
7 page. Most of these are notices from customers that  
8 they wish to cancel service.

9 And to the extent that the complaints or  
10 the reasons offered for canceling the service are  
11 completely consistent with the complaints that have  
12 been received in this case, we would ask for  
13 permission to at least file a survey or a summary --  
14 excuse me -- that at least states, for example, that  
15 50 percent of them pertain to slamming or 60 percent  
16 of the complaints received pertain to terms not  
17 having been disclosed prior to assuming service with  
18 Santanna.

19 Also that the dates that are covered in  
20 those documents predate the complaints that anyone  
21 has received in the organization represented here  
22 today. The information is very relevant. It's

1       extremely important and to have had such a little  
2       amount of time to review it, we respectfully request  
3       that we be able to either at least keep the record  
4       open and submit some type of summary or in the  
5       alternative have the disk --

6               JUDGE ALBERS:   Let me back up for a minute.  
7       Just so I'm clear, this is the disk that represents  
8       the customers who have terminated service from July  
9       1st to July 31st.   Is that the DR that triggered  
10      that response?

11             MR. MARKOFF:   Correct.

12             MS. NORINGTON-REAVES:   What's reflected on  
13      there even predates July.   There are complaints back  
14      to March.

15             MR. MARKOFF:   There are two aspects on the  
16      CD-ROM.   One of them -- I haven't viewed it, to be  
17      perfectly honest.   But my understanding is it  
18      discloses the accounts that terminated service  
19      between July 1st and 31st.   In addition, there is  
20      correspondence received from customers scanned to  
21      another file.   That is not date limited.

22             JUDGE ALBERS:   Okay.

1           MR. MARKOFF: Is that -- Karin, you've reviewed  
2 it.

3           MS. NORINGTON-REAVES: Right. My understanding  
4 is the correspondence and the various customer  
5 complaints, if you will, date back as far as March.  
6 And they're very relevant to the issue of compliance  
7 with Section 19-115.

8           JUDGE ALBERS: Well, do you foresee --  
9 hypothetically would you foresee Santanna having an  
10 opportunity to respond to any late-filed exhibit  
11 that you submit? Is this a joint request from CUB  
12 and AG?

13          MS. NORINGTON-REAVES: Yes. We just decided to  
14 let the AG do the talking.

15          MS. DALE: I don't see any problem with the  
16 response, but if Mr. Gatlin is the only witness who  
17 the Company is presenting, then it has to be Mr.  
18 Gatlin who responds.

19                 And I would add, Your Honor, that I think  
20 it would be unfair to prejudice the Attorney General  
21 as well as the Citizens Utility Board for having to  
22 make this request because counsel for Santanna has

1       insisted all along that producing any such lists or  
2       compilations would be too time consuming and too  
3       burdensome and just too horrific to ask but when it  
4       was ordered, it was done in 24 hours.

5               And I don't believe that we should be  
6       prejudiced or kept from making a record that the  
7       Commission can rely upon because Santanna delayed in  
8       producing something that it's obvious now was well  
9       within their capability of producing in a very short  
10      time.

11             MR. MARKOFF: Can I respond briefly to that?

12             JUDGE ALBERS: Very briefly.

13             MR. MARKOFF: Number one, this was -- to go  
14      through what we said was it would be very difficult  
15      and time consuming to go through and call all of the  
16      complaints that came -- what we gave them was  
17      everything uncalled, whether it's complaints or not.  
18      So that's different than going through individual  
19      files. It was also a much narrower set than every  
20      file.

21             Secondly, Mr. Gatlin is indeed the only  
22      witness presented with this stuff was just produced

1 on customer service things which is after Mr. Gatlin  
2 submitted testimony. And Mr. Gatlin hasn't even  
3 seen the production, so.

4 JUDGE ALBERS: Well, before I rule on this, I  
5 want to get a better idea how you envision this  
6 working.

7 What type of response -- the idea you want  
8 to submit something after we have the hearing today,  
9 to me, I think that Santanna should have the  
10 opportunity to respond to that in some form. I'm  
11 not really sure, given what you said so far, if  
12 you're envisioning -- I assume you're envisioning a  
13 written summary.

14 MS. NORINGTON-REAVES: A chart, if you will.

15 JUDGE ALBERS: Not testimony, but just a  
16 separate exhibit of some sort, not testimony.

17 MS. DALE: Well, you know, again, I think we  
18 know better what the summary would say, although we  
19 try to keep it in summary form. But until we have a  
20 chance to really look at it -- and I did look at it,  
21 you know. I hesitate to say whether there would be  
22 no testimony associated with it. Our witness

1       hasn't had a chance to see it.

2               So you're right, it would be in written  
3       form. I certainly would have no problem with giving  
4       Santanna an opportunity to respond also in written  
5       form if you decide that Mr. Gatlin won't be  
6       cross-examined on this. But he's the witness. He's  
7       testifying about marketing and about consumer  
8       complaints and how the Company handled them. And I  
9       think he's the appropriate party to cross-examine.

10       MR. HUCKMAN: Judge, if I may.

11       JUDGE ALBERS: When would you envision this  
12       document being submitted? 'Cause I'm concerned  
13       about the time line here.

14       MS. NORINGTON-REAVES: We recognize and  
15       appreciate the concerns. Our concern is we've not  
16       had a chance to look at it. I mean, well, we've had  
17       a chance to look at it but not thoroughly review it.

18               I hesitate to make a commitment today as  
19       to how much time we would need. I can assure you  
20       that we would put all of our energy into it, as I  
21       think all of us have done, to try and produce things  
22       in a timely fashion. But I just, I can't make you



1           an assurance, I mean, in the next week.

2           JUDGE ALBERS:   Are you talking about a couple  
3           days, next week?

4           MR. KAMINSKI:   Say a week.

5           MS. NORINGTON-REAVES:   At least a week.

6           MR. MARKOFF:   I don't know if this would help,  
7           Judge, but we would stipulate that the complaints  
8           are similar to the complaints that have been  
9           received by the Attorney General and CUB.   What it  
10          doesn't show is the volume.   But if it's just a  
11          matter to show that similar complaints have been  
12          received, Santanna would stipulate to that.

13          MS. NORINGTON-REAVES:   Well, we think the  
14          volume is relevant.   And I don't want to make a  
15          representation today that the volume is something  
16          other than what it is.

17                 I can tell you that one injury is a lot  
18          from NICOR.   That alone is 2,193 pages with  
19          approximately two injuries per page.   Now, without  
20          going through each one of those pages and verifying  
21          whether it's a log of a customer having called in or  
22          whether it's a log that actually contains the

1           content of a complaint, I can't tell you that it's  
2           2,000 or 3,000 or 4,000.

3           MR. MARKOFF:   What's the NICOR entry?

4           MS. DALE:    Those were Customer Select.

5           MR. MARKOFF:   Oh, they were customers in the  
6           NICOR program?

7           MS. NORINGTON-REAVES:   Right.  I apologize for  
8           the confusion.

9           JUDGE ALBERS:   If they just want to tally up  
10          the -- I'm not sure how to phrase it -- tally up  
11          what type of complaints were registered, is that  
12          still objectionable to you if you're willing to  
13          stipulate to the nature of the complaints?

14          MR. MARKOFF:   I mean, that's -- I have no  
15          problem with that subject to we may want to check  
16          what they come up with, I mean, 'cause I don't know.  
17          Maybe we can do it at the same time, but that would  
18          be my only concern about that.

19          JUDGE ALBERS:   Okay.

20          MR. HUCKMAN:   I don't know if this assists or  
21          confuses matters, but if these items were admitted  
22          as exhibits today, then if any party were to tally

1 up the complaints and provide a summary, essentially  
2 that would be taking evidence that's in the record  
3 and just commenting on it. So if the disk were  
4 admitted, CUB could do a summary instead of being an  
5 exhibit. It would be a discussion of information in  
6 the record in their brief.

7 MR. MARKOFF: To the extent that it is used for  
8 simply that purpose and not as the truth of the  
9 complaints themselves, we would be agreeable to  
10 that.

11 JUDGE ALBERS: Well, I think that particular  
12 comment is, from what I can tell, part of your case.  
13 And that's a big part of your case, so.

14 MR. MARKOFF: But I don't think they're  
15 admissible for the truth of what they say because  
16 they are, you know, they're just taking complaints.  
17 That is hearsay, so.

18 JUDGE ALBERS: I understand your position. I  
19 don't know if I have any opinion yet, but I'm sure  
20 you'll all try to persuade me.

21 Let me think about this. Does this last  
22 suggestion from Staff have any --

1 MS. NORINGTON-REAVES: I think it's a good  
2 suggestion. I personally would be open to it.

3 MS. DALE: We haven't discussed it, but I would  
4 say that's certainly a possibility.

5 JUDGE ALBERS: Okay. Let me think about it.  
6 We'll take this up again a little bit later today,  
7 then.

8 MS. NORINGTON-REAVES: Another preliminary  
9 matter.

10 JUDGE ALBERS: Okay.

11 MS. NORINGTON-REAVES: We've just received  
12 responses to CUB's -- actually, let me back up. We  
13 received the written responses and objections to  
14 CUB's second and third data requests.

15 Just now, prior to this proceeding  
16 beginning, we received responsive documents, several  
17 envelopes. One that says Contracts. I think -- am  
18 I right? -- I feel cassette tapes in one. Okay.  
19 And a stack of documents. Clearly we've not had an  
20 opportunity to go through this.

21 And at some point if we are to be able to  
22 provide full comment on this in this matter, we're

1       going to need to have an opportunity to review this  
2       and be able to question Mr. Gatlin if necessary on  
3       some of this material.

4               JUDGE ALBERS:   When did you submit the DRs and  
5       when did you ask for responses?

6               MS. NORINGTON-REAVES:   The DRs I believe were  
7       submitted --

8               MR. MARKOFF:   I think it was, like, Thursday  
9       and Friday.

10              MS. NORINGTON-REAVES:   -- I want to say  
11       Thursday afternoon and Friday morning.   We asked for  
12       production on Monday.   We submitted DRs -- I'm  
13       sorry.   This is Attorney General's.   Let's see.   For  
14       the third set, we submitted two DRs.   One asked for  
15       seven contracts, actually, for the production of  
16       the original contracts for seven customers.   The  
17       second asked for -- I can't tell from their  
18       response.

19                      The first asked for the original contracts  
20       and copies, I believe.   And then with our second set  
21       we had seven requests.   The first one had  
22       approximately 13 or 14 requests for original

1 contracts. The second asked for materials that were  
2 identified in e-mails, Santanna e-mails. And this  
3 just says that, subject to objection, Santanna will  
4 produce the responsive documents.

5 I have no way of identifying right now  
6 which of these is responsive to which. I know a  
7 couple of these are contracts and I guess would be  
8 responsive to either 2.0 or 3.0.

9 JUDGE ALBERS: When did you ask for responses?

10 MS. NORINGTON-REAVES: We asked for responses  
11 by Monday for both of these.

12 MR. MARKOFF: Judge, there was significant  
13 motion practice on Monday.

14 MS. NORINGTON-REAVES: That's an  
15 understatement.

16 MR. MARKOFF: And I think the deadline they  
17 asked for was 1:00 p.m. and 1:30 p.m. And I think  
18 given the very short time line that was given for  
19 these DRs, responses were made pretty quickly.

20 And there was actually nobody up here.  
21 Everybody was in transit, and they didn't get them  
22 in our office. The original contracts and the tape

1        verifications were not in our office until about  
2        three o'clock, I think. Everybody was already in  
3        transit. So that's why they were just given this  
4        morning.

5                If I may, the original contracts that are  
6        inside the envelopes are specified by DR, and they  
7        are not really that voluminous or I don't know what  
8        -- I think they just want to verify the signature.  
9        And that should be fairly simple. The contracts,  
10       the stack that Ms. Norington is holding now are  
11       contracts between Santanna and the telemarketers.

12               And they're actually about half that  
13       volume because I believe there's one for NICOR and  
14       one for People's with each marketer. So they're  
15       really the same. So that would be a little more  
16       burdensome would be the verification tapes, but we  
17       got those together as soon as we could. You put  
18       them together and you record them and you produce  
19       them.

20               MS. NORINGTON-REAVES: Well, let me add,  
21       there's also this binder that we received as well as  
22       two other sets of documents. One we received and

1       one we didn't.

2               MR. MARKOFF:  They were all conveyed yesterday.  
3       That other binder that you're looking at are  
4       transcripts to the verification tapes to actually  
5       make it easier to --

6               MS. NORINGTON-REAVES:  We certainly didn't  
7       receive this one yesterday.  I know we received this  
8       'cause I printed it out before we left, but we did  
9       not receive this one until this morning.

10              JUDGE ALBERS:  Well, I'm concerned about when  
11       we would come back and hear any cross on this.

12              MR. MARKOFF:  Additionally, Mr. Gatlin is from  
13       Texas and it's obviously burdensome for him to come  
14       here.  And again, it was a very short time line to  
15       turn this stuff around.  I think we did, in light of  
16       preparing for everything, we did it pretty quickly.

17              MS. DALE:  I would agree, Your Honor, that it's  
18       burdensome.  But we are here today because of an  
19       application from Santanna.  It is their request to  
20       obtain the certification.  And in light of that, I  
21       think the burden that they've taken on is voluntary.

22              JUDGE ALBERS:  Well, at this point in time I'm



1       going to suggest that perhaps CUB will want to cross  
2       Mr. Gatlin last and give you at least a couple hours  
3       to start looking through stuff --

4               MS. NORINGTON-REAVES:   Just a point of  
5       clarification.   I guess I'm unclear on how that  
6       would give me a couple of hours when I need to be  
7       sitting here at this table listening to what's being  
8       said with the witnesses.

9               I guess my suggestion would be that maybe  
10      at some point we break for, you know, two hours, an  
11      hour and a half.   I mean, I can sit here and eat  
12      lunch and try not to stain the documents.   But we're  
13      going to need some time to look through this.

14              And with respect to the way that cross has  
15      been prepared, I don't know that it -- it would most  
16      likely would be problematic for CUB to go last in  
17      terms of the order in which it's already been  
18      prepared.

19              JUDGE ALBERS:   Well, I think this day's going  
20      to be long enough as it is.

21              MS. NORINGTON-REAVES:   I'm not trying to  
22      prolong it, Your Honor. I'm trying to have an ample

1 opportunity to adequately review the documents and  
2 be able to put on my case.

3 JUDGE ALBERS: I'll at least give you lunch.  
4 You can look through it during the hour for lunch.  
5 I think in large part this is going to depend on how  
6 this day is going as far as the time is being  
7 consumed through whatever.

8 MS. NORINGTON-REAVES: Is it possible that if  
9 we go forward with our cross this morning, go  
10 through these documents during lunch, that we could  
11 re-call him to respond to any new information we  
12 found? I mean, we may not even be finished by noon.

13 JUDGE ALBERS: That's what I'm thinking.

14 MS. NORINGTON-REAVES: But I'm saying, is it  
15 possible to do it in that way so as not to throw out  
16 of kilter the order that we've already worked out  
17 with respect to our cross-examination?

18 JUDGE ALBERS: We would give Mr. Markoff the  
19 opportunity to redirect?

20 MS. NORINGTON-REAVES: Yes. Yes.

21 JUDGE ALBERS: We can try that.

22 MS. NORINGTON-REAVES: All right. Thank you,

1           Your Honor.  Appreciate it.

2           JUDGE ALBERS:  Any other preliminary matters?

3           MR. HUCKMAN:  One minor item, Judge.

4                       Because of the volume of documents and  
5       complaints in this case, there's obviously a  
6       possibility that the names of customers who have  
7       complained or who have enrolled may appear in the  
8       record.  I'm sure most of those customers never  
9       intended that their names might appear in a  
10      proceeding of this sort.

11                      So I would just ask the parties if they  
12      could be very sensitive to the fact that customers  
13      probably don't expect to have their names as part of  
14      this record and use all sensitivity when customer  
15      names do occur to try and protect confidentiality  
16      whenever realistically possible.  But I understand  
17      that that creates a great deal of complication as  
18      well.

19           JUDGE ALBERS:  Well, I would expect that from  
20      everyone.

21                      To the extent that any document might have  
22      anyone's name or their meter number or identifying

1 information, I would expect it to be redacted and  
2 submit that version for the public record. Nothing  
3 that will show up on e-Docket.

4 As long as I'm on that topic, then, if any  
5 exhibit you're offering is on e-Docket, please say  
6 so. Even if it's been submitted on e-Docket and  
7 there's a slight correction to it, identify that  
8 correction 'cause we're going to have to have a new  
9 corrected exhibit paper format submitted today. If  
10 not today, you can get it tomorrow or the next day,  
11 point being, anything on e-Docket identified as  
12 being on e-Docket and there's any corrections to it,  
13 get me a hard copy of it.

14 Any questions or thoughts in that regard?  
15 Okay.

16 I guess I'll go ahead and swear in all  
17 witnesses at the same time. And witnesses, when  
18 you're on the stand, please speak clearly so the  
19 court reporter can make sure and get everything.

20 So could you all please stand and raise  
21 your right hand.

22 (Whereupon the witnesses were

1                   sworn by Judge Albers.)

2                   JUDGE ALBERS:   Thank you.

3                   From the witness list I received, it  
4                   sounds like Mr. Gatlin will be going first.   If  
5                   you'd like to call your first witness or your only  
6                   witness.

7                   MR. MARKOFF:   Santanna will call Wayne Gatlin  
8                   to testify, please.

9                                   **WAYNE GATLIN**

10                   having been first duly sworn, was examined and  
11                   testified as follows:

12                                   DIRECT EXAMINATION

13                   BY MR. MARKOFF:

14                   Q.    Mr. Gatlin, could you state your name and  
15                   address for the record, please.

16                   A.    My name is Wayne Gatlin.   My business  
17                   address or home address?

18                   JUDGE ALBERS:   Business.

19                   THE WITNESS:   Business address is 6805 North  
20                   Capital of Texas Highway, Suite 270, Austin, Texas  
21                   78731.

22                   MR. MARKOFF: Q.   And what is your occupation?

1           A.     I am the president of Santanna Natural Gas  
2     Corporation d/b/a Santanna Energy Services.

3           Q.     And are you the same Wayne Gatlin who  
4     submitted an application in this proceeding and  
5     rebuttal testimony?

6           A.     Yes, I am.

7           MR. MARKOFF:   Okay.   I have one somewhat of a  
8     housekeeping matter.   We submitted Mr. Gatlin's  
9     rebuttal testimony as Exhibit 1, but in fact the  
10    application apparently is the direct testimony.

11          JUDGE ALBERS:   I think it's fine to refer to  
12    rebuttal testimony as Exhibit 1.   I think everyone  
13    will understand that the application is -- it's  
14    already in the record anyway.

15          MR. MARKOFF:   Just sort of there?

16          JUDGE ALBERS:   Yes.

17          MR. MARKOFF:   All right.

18          Q.     In that -- the application that Santanna  
19    submitted, is that actually in three parts?

20          A.     I believe that's correct.

21          MR. MARKOFF:   May I approach the witness?

22          Q.     If you could review this stack here and

1 tell me if that is -- take you time on this -- tell  
2 me if that's a true and correct copy of the papers  
3 Santanna submitted as part of its application to the  
4 Commission.

5 A. Without literally reading every page, it  
6 appears to be complete.

7 Q. And are you aware of any changes or  
8 additions to that application?

9 A. Not that aren't here already.

10 Q. Now tender to you what is Santanna's  
11 Exhibit Number 1, which is your rebuttal testimony.  
12 If you could review that for me and let me know if  
13 you have any changes or additions to that.

14 A. I am aware of one addition that needs to  
15 be made to some section of the testimony. Based on  
16 further review of the tapes, transcripts, there was  
17 a --

18 MR. MARKOFF: If I may stop you for just a  
19 minute.

20 This is going to disclose a customer name.  
21 So I don't know how we want to handle that.

22 MS. NORINGTON-REAVES: Don't we already have a

1 protective order in this case for the customers'  
2 names and all?

3 MS. DALE: We both signed a proprietary  
4 agreement.

5 MS. NORINGTON-REAVES: Right.

6 JUDGE ALBERS: I think we do. I'm not sure if  
7 the protective order just covers the written  
8 documents or also covers, you know, the  
9 cross-examination type --

10 MS. NORINGTON-REAVES: Well, if I remember  
11 correctly, I don't think we specified documents in  
12 the request for it. What we said was not to  
13 disclose the customer's name, address, meter number,  
14 account number, telephone number, or any other type  
15 of identifying information.

16 Is it possible to just notify the court  
17 reporter and have that marked --

18 JUDGE ALBERS: Well, I think generally whenever  
19 we have that we have, like, an in-camera portion of  
20 the transcript.

21 MS. NORINGTON-REAVES: Right.

22 JUDGE ALBERS: We constantly have a transcript



1 broken and --

2 MS. NORINGTON-REAVES: Could we just, for  
3 example, say Mrs. R and identify the document,  
4 maybe?

5 JUDGE ALBERS: That's what I was going to  
6 suggest, abbreviate or make up a substitute name.  
7 Use the first letter of the person's name.

8 THE WITNESS: Okay. That's fine.

9 There was a -- either in review of the  
10 transcripts or the tapes, there was a Ms. R that had  
11 apparently been overlooked in the tapes and  
12 verifications that I had reviewed earlier that were  
13 very apparently not a clean verification as far as  
14 the telemarketing sales verification script went.

15 This entity very clearly stated that they  
16 would think about the program rather than agree to  
17 the program. So I just wanted to supplement my  
18 testimony with that.

19 MR. MARKOFF: Q. Other than that, do you have  
20 any additional changes to your rebuttal testimony?

21 A. Not that I'm aware of.

22 Q. And other than that, if you were asked the

1 questions in that testimony or were submitting the  
2 information in the application, would you have  
3 answered them the same way today?

4 A. Yes, I would.

5 MR. MARKOFF: I'd move for admission of both  
6 the application and the rebuttal testimony into  
7 evidence.

8 JUDGE ALBERS: Okay. The application and the  
9 responses to that ruling that was issued on July,  
10 those are already considered part of the record.

11 MR. MARKOFF: Okay.

12 JUDGE ALBERS: You're good there.

13 MR. MARKOFF: Okay.

14 JUDGE ALBERS: Is there any objection to the  
15 rebuttal testimony?

16 You seem like you want to say something,  
17 Miss Reaves. Speak now or forever hold your peace.

18 MS. NORINGTON-REAVES: I heard those words not  
19 too long ago.

20 I'm thinking that I will reserve any  
21 motions to strike portions of the testimony for  
22 cross, if that's okay.

1 JUDGE ALBERS: I will wait until cross is  
2 completed before any admission is made.

3 MS. NORINGTON-REAVES: Okay.

4 MR. MARKOFF: Tender the witness to whomever is  
5 up first.

6 JUDGE ALBERS: Okay. Did we have a preference  
7 here?

8 CROSS-EXAMINATION

9 BY MR. HUCKMAN:

10 Q. My name is Andrew Huckman. I am an  
11 attorney for the Staff of the Illinois Commerce  
12 Commission, and I will have a few brief and general  
13 questions for you today.

14 And I would like to start by taking a look  
15 at page 12 of your testimony. Let me first ask, do  
16 you have a copy of your testimony available?

17 A. Yes, I do.

18 Q. Okay. Let's take a look at page 12, line  
19 258. And if I'm correct there, you state, "I take  
20 the absolute silence about our current materials" --  
21 and I understand those to be marketing materials --  
22 "as acknowledgment by the Staff of the Commission,

1 CUB, and the office of the Attorney General that  
2 those materials are perfectly acceptable." Is that  
3 what you --

4 A. On page 12?

5 Q. I'm sorry. Page 12, line 258. There's  
6 always a possibility that numbering is different on  
7 your copy.

8 A. No, sir. They're the same. I'm sorry.  
9 Would you repeat?

10 Q. Do you say there, "I take the absolute  
11 silence about our current materials" -- which I  
12 understand to be marketing materials -- "as  
13 acknowledgment by the Staff of the Commission, CUB,  
14 and the office of the Attorney General that those  
15 materials are perfectly acceptable"?

16 A. The statement just addresses the fact that  
17 I believe that all three of those organizations have  
18 copies of our latest scripts, sales scripts and  
19 verification scripts. And I think that there had  
20 been requests for getting back on those to which we  
21 had received no feedback, implying to us that there  
22 was no feedback on those, that they were acceptable.

1           Q.    Okay.  I recognize that you're not a  
2           lawyer, Mr. Gatlin.  But to the best of your  
3           knowledge, does the Public Utilities Act include any  
4           provision that exempts marketing materials from  
5           otherwise applicable statutory requirements in the  
6           event the materials are informally shared with our  
7           Staff and we don't provide you any feedback or  
8           remain silent?  To the best of your knowledge, is  
9           there any such provision in our act?

10          A.    I'm not sure I understood that question.

11          Q.    In other words, because you provided the  
12           materials to Staff and Staff did not provide you  
13           feedback, do you believe that that makes the  
14           materials comply with the Public Utilities Act  
15           merely because materials were informally shared and  
16           you did not receive feedback?

17          A.    I don't believe that that creates a  
18           legally-binding verification from any of those  
19           organizations that it's acceptable.  I simply stated  
20           that it was our interpretation because we didn't get  
21           any feedback on it that it was acceptable.

22          Q.    Okay.  But your interpretation only?

1           A.     Yes, sir.

2           Q.     Okay.  If you don't mind, I'd like to  
3           familiarize you with one of the requirements of our  
4           Public Utilities Act.  I will refer to Subsection  
5           19-115(f)(1).  And I have a -- I can read that  
6           section to you, and I will also provide you a copy  
7           of that section.

8                     But just reading that section it states,  
9           An alternative gas supplier shall comply with the  
10          following requirements with respect to the  
11          marketing, offering, and provision of products and  
12          services.  That's (f).

13                    And then 1 beneath that is, Any marketing  
14          materials which makes statements concerning prices,  
15          terms, and conditions of service shall contain  
16          information that adequately discloses the prices,  
17          terms, and conditions of the products or services.

18                    Judge, if I may approach the witness, I'd  
19          like the witness to have a copy of this provision in  
20          front of him.

21                    JUDGE ALBERS:  Any objection?

22                    MR. MARKOFF:  No objection.

1 MR. HUCKMAN: Q. Do you see that section?

2 A. Yes, I do.

3 Q. I'd also like to refer to your testimony  
4 again on page 29 at about line 650. Do you have  
5 that in front of you?

6 A. Yes, sir.

7 Q. And there you say, "I have to acknowledge  
8 that we may not have understood the necessary level  
9 of information that we needed to disclose to  
10 prospective customers." Is that correct?

11 A. Yes, sir.

12 Q. Would that be another way of  
13 acknowledging, based on the statutory section you  
14 have in front of you, that Santanna may not have  
15 understood the necessary level of information that  
16 the Public Utilities Act requires your marketing  
17 materials to disclose?

18 A. Well, what it is saying is that after the  
19 fact, circumstances identified to us that there were  
20 other items that needed to be specifically addressed  
21 and identified because they became the subject of  
22 complaints that we had not envisioned or interpreted

1 as anything that needed to be identified in our  
2 initial sales scripting.

3 Q. So after the fact the Public Utilities  
4 Act's requirements on disclosing pricing information  
5 came to your attention, but before the fact you were  
6 not aware of the Public Utilities Act's requirements  
7 with regard to disclosing prices, terms, and  
8 conditions?

9 A. That was not what I was saying. I was  
10 saying that we were aware of the requirements and,  
11 in our interpretation, we had met those  
12 requirements.

13 I'm simply saying that after the fact,  
14 after the beginning of the program, there was  
15 circumstances, complaints that came forth that made  
16 us aware of the fact that there was a need to  
17 discuss and educate beyond what we had done in our  
18 initial scripting on at least one particular issue.

19 Q. Okay. But when you did your initial  
20 scripting, you were aware that the Public Utilities  
21 Act requires that that information adequately  
22 disclosed in plain language the prices, terms, and



1 conditions of the products and services being sold  
2 to the customer?

3 A. Yes.

4 Q. Thank you.

5 Turn to page 31 of your testimony at about  
6 Line 700. And there you are asked, if I am correct,  
7 "Would Santanna agree to Ms. Howard's call center  
8 recommendation?" Miss Howard, as you know, is a  
9 member of your staff. And I believe that that  
10 question refers to her testimony and page 10 of her  
11 testimony.

12 Do you have a copy of her testimony  
13 available? I can provide you one if not.

14 A. No, I do not.

15 Q. Let me provide you a copy.

16 Judge, may I approach the witness?

17 Can I interpret your answer to the  
18 question about Ms. Howard's call center  
19 recommendation to mean that as you sit here today  
20 and based on the way Ms. Howard presented that  
21 recommendation, you are not ready to commit to  
22 accepting that recommendation in the event you are

1 granted a certificate?

2 A. Well, the recommendation I think needs  
3 further definition just so that we understand  
4 anything that would be -- that we would be asked to  
5 commit to.

6 It's certainly our goal to do what is  
7 necessary to create a call center atmosphere whereby  
8 the answer times, route calls response to those  
9 people that want to talk -- to those customers that  
10 want to talk to Santanna about any issues, whether  
11 it's to express a complaint or simply to ask a  
12 question, is dealt with in such a manner that those  
13 customers leave that experience not with a bad  
14 taste in their mouth but, you know, with a satisfied  
15 that the call center met their needs, that they  
16 didn't get dropped, or that they didn't have -- get  
17 a busy signal or anything unacceptable that they  
18 would expect when they get ready to call customer  
19 service.

20 Q. It seems to me there are two possible ways  
21 to understand your answer. One is, despite some  
22 concerns in principle, we are willing to accept the

1        recommendation Miss Howard makes. And the other  
2        interpretation would be, for we do not fully  
3        understand the recommendation and cannot in  
4        principle commit to it at this time.

5                Which of those more accurately  
6        characterizes your position today?

7                A.    Well, I think the first one more  
8        accurately depicts our position.

9                There are some things that we don't  
10       understand about definitions. When you state a call  
11       is answered, we don't understand whether that means  
12       by an automated system. Does that suffice with the  
13       definition of 60 seconds or does that have to be a  
14       live person answering?

15                So there's simply some clarification of  
16       the requirements as stated that we wanted to get  
17       before we blindly made a commitment.

18                Q.    But in principle you're comfortable with  
19       the recommendation, assuming those clarifications  
20       are made?

21                A.    I believe that we are.

22                Q.    Thank you.

1                   And similarly, I will refer you to page 32  
2                   of your testimony at 718 where you were asked a  
3                   similar question about a remedial action plan that  
4                   Miss Howard recommends on page 11 of her testimony  
5                   at line 242. And I will ask essentially the same  
6                   question.

7                   Can we understand that in the event a  
8                   certificate is granted, Santanna is willing to  
9                   provide the remedial action plan or are there  
10                  concerns that you have that would cause you today to  
11                  say, No, Santanna is not prepared to commit to  
12                  providing that plan?

13                 A.    That we're concerned about submitting a  
14                       remedial action plan?

15                 Q.    Let me try again. As you sit here today,  
16                       is Santanna willing to provide the remedial action  
17                       plan that Miss Howard requests?

18                 A.    We can't provide that now because we  
19                       haven't created it as of yet. We haven't addressed  
20                       the construction of that plan in some kind of a  
21                       format to present to anybody.

22                       Certainly is our business requirements to

1 go forward and create a business plan that addresses  
2 all the things that have been made an issue through  
3 this educational process. I think that the answer  
4 is yes, that we don't have a problem with submitting  
5 a plan that shows some of the things that Santanna  
6 plans to address, itemize to enhance the call-center  
7 operations or all of the aspects associated with the  
8 residential program.

9 MR. HUCKMAN: Okay. That is the end of my  
10 questions. Thank you.

11 THE WITNESS: Thank you.

12 MS. DALE: May I proceed, Your Honor?

13 JUDGE ALBERS: Sure.

14 CROSS-EXAMINATION

15 BY MS. DALE:

16 Q. Good morning, Mr. Gatlin. My name is  
17 Janice Dale. I'm with the Attorney General's  
18 office.

19 How are you this morning?

20 A. I'm great.

21 Q. I'm afraid that the copy of testimony that  
22 I have of yours was printed off the e-mail and so

1       the line references are different. So what I'm  
2       going to do is give an estimate of where I think the  
3       line would be and then read the question so that Mr.  
4       Gatlin can identify where we are in the text because  
5       our references would be a little different.

6               And Your Honor, I would also ask leave,  
7       I'm only going to have ten minutes' worth of  
8       questions. And I give the rest of my time to Mr.  
9       Kaminski on behalf of our office.

10           JUDGE ALBERS: Typically we don't double-team  
11       the witness.

12           MS. DALE: I have only very few questions.

13           MR. MARKOFF: I have no objection, Your Honor.

14           JUDGE ALBERS: You have no objection?

15           MR. MARKOFF: No.

16           JUDGE ALBERS: Okay.

17           MR. MARKOFF: May I ask, though, what version  
18       you are --

19           MS. DALE: Well, I believe I printed it off an  
20       e-mail.

21           MR. MARKOFF: Proprietary or --

22           MS. DALE: It's proprietary.

1           MR. MARKOFF: That's fine. So that we're even  
2 close on the line numbers. I don't know if it would  
3 make a difference even.

4           MS. DALE: Q. Okay. Now, you're president of  
5 Santanna. Is that correct?

6           A. Yes, ma'am.

7           Q. And I see from your testimony on the very  
8 first page, start in the same place on that one,  
9 that you wear a lot of hats at Santanna.

10                   In going through that first paragraph  
11 describing your responsibilities or your  
12 responsibilities as president of Santanna, I think I  
13 counted nine separate roles: operations, corporate  
14 decision-making, business planning and scheduling,  
15 negotiating and establishing supplier relationships,  
16 procuring natural gas, overseeing corporate  
17 headquarters, and also making some technological  
18 assessments and assisting in staffing decisions.

19                   Would you be able to say approximately  
20 what percentage of your time you spend doing each of  
21 these things, if that's possible?

22           A. Now under --

1           Q.    That's what we're looking for.  Just  
2           something rough.  I'm not looking for mathematical  
3           precision, but --

4           A.    I'm really just shooting from the hip on  
5           that.  That would be extremely difficult to do.

6           Q.    But you do have responsibilities in all  
7           these areas?

8           A.    Yes, ma'am.  Fortunately, they don't all  
9           impose themselves on me on the same day or within a  
10          two-week period.  So you don't wind up in a sprint  
11          as we've been in under the last couple of weeks.

12          Q.    And I don't see marketing on that list.  
13          Is that correct?

14          A.    If it's not on there, then it probably  
15          should be.

16          Q.    It's maybe --

17          A.    Oversight responsibilities in marketing.

18          Q.    Maybe a subset of operations?

19          A.    Uh-huh.

20          Q.    Okay.  And I see your degree is in  
21          petroleum engineering?

22          A.    Yes, ma'am.



1           Q.    And you've spent most of your career in  
2           the areas of engineering and management except for a  
3           brief stint in acquisitions at Pioneer.  Is that  
4           correct?

5           A.    Yes, ma'am.

6           Q.    Okay.  And I notice that attached to your  
7           amended application you have provided the CVs of  
8           other executives in Santanna, and their areas of  
9           concentration have been similar to yours, basically  
10          in the commercial and industrial side of selling  
11          natural gas.  Is that correct?

12          A.    Yes, ma'am.

13          Q.    Okay.

14          A.    Let me clarify that question.  You're  
15          talking about as far as their experience with  
16          Santanna?

17          Q.    Correct.

18          A.    Yes, ma'am.

19          Q.    And you say -- and I have this at lines  
20          119 through 120.  The question is under, "Anything  
21          else?"  Do you see the question that says, "Anything  
22          else?"

1           A.     Yes, ma'am.

2           Q.     Line 16 you state in your response to that  
3           question that Santanna's longest running natural gas  
4           marketer to commercial and industrial users in  
5           Illinois and that your business has been exclusively  
6           in Illinois for some time.

7                     How many years has Santanna been marketing  
8           natural gas to commercial and industrial customers  
9           in Illinois?

10          A.     Santanna was incorporated in 1988, and we  
11          were marketing natural gas to commercial and  
12          industrial customers when Santanna was incorporated.  
13          And we've continued to do so until today.

14          Q.     So since 1988.  So that's about 14 years.  
15          Correct?

16          A.     (Witness nodded head.)

17          Q.     Okay.  And --

18          MR. MARKOFF:  I'm sorry to interrupt.  Mr.  
19          Gatlin, if you could just audibly answer the  
20          questions as opposed to just nodding so that the  
21          court reporter can --

22          THE WITNESS:  I apologize.

1 MS. DALE: Q. Could you say what your  
2 Company's revenues on average in Illinois have been  
3 let's say over the last three years in that  
4 commercial and industrial area? Would you be able  
5 to state --

6 A. Our gross revenues?

7 Q. Yes.

8 A. Average over the last three years.

9 Q. Or the last year. Just to give us an idea  
10 as to --

11 A. I think that the average has probably been  
12 in the \$30-million-a-year range.

13 Q. Uh-huh. Okay.

14 A. I don't have those figures to reference,  
15 so that is a real guess.

16 Q. Okay. And would you say that your Company  
17 has been fairly successful in marketing to  
18 commercial and industrial companies over that period  
19 of time since you've been in business?

20 A. Yes, ma'am.

21 Q. And continues to be successful?

22 A. Yes, ma'am.

1           Q.    Now, in marketing to your particular  
2           commercial and industrial customers, I would imagine  
3           you didn't solicit those customers by going door to  
4           door.  Is that correct?

5           A.    I'm not aware of any door-to-door efforts  
6           that we have had associated with the commercial and  
7           industrial.

8           Q.    And you probably while -- let me rephrase  
9           this.

10                    You probably didn't solicit customers over  
11           the phone in a period as short as three or four  
12           minutes?  You probably -- answer that question.

13           A.    Is the question have we utilized  
14           telemarketing in the commercial and industrial?

15           Q.    No.  The question is, if you have  
16           attempted to solicit commercial and industrial  
17           customers over the telephone, would you describe a  
18           typical solicitation as something that takes three  
19           or four minutes or would you characterize it as, you  
20           know, perhaps making a phone call, visiting,  
21           negotiating a contract, more of a long, drawn-out  
22           negotiation process than just calling and signing

1       somebody up in three or four minutes?

2           A.    No.   Actually, we have engaged  
3       successfully the telemarketing effort in the small  
4       user commercial and industrial programs.  You would  
5       not expect to experience a successful sales effort  
6       via telemarketing with Bethlehem Steel but just  
7       simply by the mechanism by which they do business.  
8       But the small-customer programs, we have utilized  
9       telemarketing in those commercial and industrial  
10      programs.

11          Q.    Okay.  When you say small-customer  
12      commercial and industrial, I'm a little confused as  
13      to what you mean.  At least as far as the Public  
14      Utility Act goes, there's a certain definition for  
15      small-business customer, and I don't know that  
16      that's the same as commercial and industrial.

17                  Are you talking about some other separate  
18      category?

19          A.    I don't know that I am.  What I am talking  
20      about is that under the NICOR Select program and  
21      under the People's Gas Light and Coke or People's  
22      Gas and North Shore Gas CFU programs where those

1        programs were designed and created my understanding  
2        of along the lines of a program that would be more  
3        -- I think that they targeted those programs for  
4        smaller commercial and industrial users initially  
5        prior to -- we're not talking about residential.  
6        We're just talking about commercial and industrial.

7            Q.     During the 14 years that Santanna has been  
8        in business in Illinois let's say prior to this  
9        year, have you become familiar with the FTC's  
10       telemarketing rules?

11           A.     We've only been involved with  
12       telemarketing programs I believe -- I don't have the  
13       date on the tip of my tongue as far as when we  
14       initiated the first telemarketing program, but it's  
15       been within the last two to three years, year to  
16       two, two to three.

17           Q.     And during that time have you become  
18       familiar with the FTC's telemarketing rules?

19           A.     It's my recollection that we had  
20       referenced anything that would be applicable to our  
21       telemarketing efforts in the state of Illinois.

22           Q.     Have you personally become familiar with

1           these rules? That's what I'm asking.

2           A.     No, ma'am, I'm not.

3           Q.     Okay. And what about the Consumer Fraud  
4           Act, are you familiar with the provisions of the  
5           Consumer Fraud Act that would apply to door-to-door  
6           sales prior to, prior to 2002, prior to your  
7           marketing efforts for residential customers?

8           A.     That was the Consumer Fraud Act?

9                     I think we've always referenced and  
10           periodically gone back and reviewed things that were  
11           applicable to Santanna in its marketing efforts in  
12           the state of Illinois as far as identifying which  
13           particular rules and regulations and requirements  
14           that we've referenced. At what time, that's very  
15           difficult for me.

16           Q.     So is the answer to the question whether  
17           you personally have become familiar with the  
18           Consumer Fraud Act, those provisions that apply to  
19           your business --

20           A.     Prior to that?

21           Q.     Yes.

22           A.     I cannot say that I have.

1           Q.    Okay.  Now, Santanna was in the, as you  
2           said, the business of selling natural gas to  
3           commercial and industrial customers for a long time  
4           before you became a participant in the customer  
5           selective choices program.  Is that correct?

6           A.    Repeat again, please.

7           Q.    Santanna was in the business of selling  
8           natural gas to commercial and industrial customers  
9           for at least 13 years before they started selling to  
10          residential customers?

11          A.    Yes, ma'am.

12          Q.    Okay.  And that's a pretty big shift in  
13          marketing focus, you're going from selling to some  
14          fairly sophisticated customers to selling to people  
15          who don't really know anything about natural gas.  
16          Is that correct?

17          MR. MARKOFF:  Objection, calls for speculation.

18          MS. DALE:  I think that Mr. Gatlin is qualified  
19          to testify.  He says that part of his  
20          responsibilities would have been marketing, that it  
21          would be a subset of operations.  And I think that  
22          it's fair for me to probe his understanding of the



1 differences between marketing to one set of  
2 customers and another set of customers.

3 MR. MARKOFF: I don't have a problem with that  
4 part of it, but it's the statement that residential  
5 customers don't know anything about natural gas that  
6 calls for speculation.

7 JUDGE ALBERS: You can probe that issue with  
8 that particular question. I'll sustain the  
9 objection.

10 MS. DALE: Q. All right. Let me rephrase the  
11 question.

12 Would -- in the past you had not -- prior  
13 to 2002 you had not marketed to residential  
14 customers. Is that correct?

15 A. That's correct.

16 Q. Okay. So what steps did you take as  
17 president of the Company to determine how selling to  
18 residential customers might be different from  
19 selling to commercial and industrial customers?

20 A. From what perspective?

21 Q. Marketing.

22 A. From a marketing effort?

1           Q.    Yes.  Having, as you said, no particular  
2 background in marketing.

3           MR. MARKOFF:  Object to the mischaracterization  
4 of that.

5           MS. DALE:  I withdraw that last comment,

6           THE WITNESS:  There was a lot of things  
7 reviewed in looking at the marketing of natural gas  
8 to residences rather than to commercial and  
9 industrial customers.  I certainly would not  
10 characterize commercial and industrial customers as  
11 having a, necessarily a higher level of  
12 understanding about business than a lot of  
13 residential owners do because the people that make  
14 up those businesses are the people that live in  
15 those residences.

16           So I certainly wouldn't -- I don't recall  
17 what your exact terminology was, but the comparison  
18 between business and a residential owner, I would  
19 never have used those terms to define the  
20 differences.  But I don't know exactly how to answer  
21 your question.  I'm not sure I fully understand the  
22 question.  What aspect of a residential customer was

1           it that you're asking about?

2           MS. DALE:  Q.  Well, I believe my question is  
3           what steps did you take as president of the Company  
4           to explore how marketing natural gas to residential  
5           customers might be different from marketing natural  
6           gas to commercial and industrial customers?

7           A.  Well, you're addressing the pure marketing  
8           act itself, the analysis or review of the  
9           residential market indicated to us or our  
10          interpretation, Santanna's interpretation of that  
11          market was that it would, it would be a -- it would  
12          have to be a mass-marketing effort, that it would  
13          have to be done with either a telemarketing  
14          approach or a door-to-door sales approach that, due  
15          to the very limited volumes of natural gas that  
16          typically are utilized by a residence in order for  
17          it to be a viable program that could survive and be  
18          available to the residential customers to  
19          participate in long term, that it would have to be a  
20          program that could be mass marketed.

21          Q.  Okay.  Now, you say in your testimony, in  
22          response to customer complaints, Santanna put in

1       certain changes to your marketing practices like  
2       changing scripts and giving different directions to  
3       your marketers, etc. Do you think those changes  
4       have been effective in reducing the problems you had  
5       previously been experiencing?

6           A.     Well, I certainly hope that they have. We  
7       have -- this thing has happened in a very -- at a  
8       very fast pace in a very short period of time.

9           You know, when we first started off the  
10      program, we started somewhat moderately, if you  
11      will, as far as the numbers of customers that had  
12      been signed up. Obviously if you signed up in the  
13      beginning of the program 300 customers, 300  
14      residential customers in a day, then the total  
15      number of customers that had agreed to participate  
16      in the program at that time is only 300.

17           So simply by magnitude of numbers, the  
18      number of complaints or customer-service issues or  
19      phone calls or whatever else would be a lot  
20      different when you have signed up 300 customers than  
21      it might be when you signed up 30,000 customers.

22           Q.     Can you --

1           A.     So -- I would like to finish the answer.

2                     So we progressed and continued to sign up  
3 more customers. We saw complaints and issues that  
4 needed to be addressed, and we responded to those,  
5 making those changes. But the changes that have  
6 been made I don't think have ever reached a steady  
7 flow where you can really see the full effect of all  
8 the changes that were made, especially those  
9 changes that were made in, for instance, July. They  
10 simply haven't worked all the way through.

11           Q.     Can you tell me when Santanna made the  
12 decision to enter the residential market?

13           A.     No, ma'am, I cannot tell you a date that  
14 that decision was made.

15           Q.     It was made when you were president,  
16 though?

17           A.     Yes, ma'am.

18           Q.     You just don't know if it was last year or  
19 two years ago or when it was?

20           A.     I could speculate. You asked me if I  
21 could tell you when. Qualitatively I could say  
22 that, you know, it either happened in the end of the

1       year 2001 or -- probably the end of the year 2001  
2       would be as good a guess as I could come up with.

3           Q.     You can't think of any event that  
4       triggered the decision to enter that market?

5           A.     One thing that would trigger the decision  
6       would be the fact that the market had opened up to  
7       deregulation.

8           Q.     Okay.

9           A.     It had not always been a market that was  
10      there.

11          MS. DALE:   Thank you, Mr. Gatlin.   I have no  
12      more   questions.

13                                   CROSS-EXAMINATION

14          BY MR. KAMINSKI:

15          Q.     Mr. Gatlin, Mark Kaminski with the  
16      Attorney General's office.

17          A.     Good morning, Mark.

18          Q.     Unfortunately, I have the same  
19      page-numbering and line-numbering problems that  
20      Janice had.   So I'm going to attempt to lead you to  
21      a couple things.   It might take a little while to  
22      find them, unfortunately.

1           You state in your testimony that Santanna  
2       revised its verification scripts on July 17th. This  
3       is on my page 11, which is an answer to -- an answer  
4       to a question that says, Has Santanna undertaken any  
5       efforts to explain the storage program differently?

6           A.     Page 11?

7           Q.     That's what my page 11 says.

8           A.     Has Santanna undertaken any efforts to  
9       explain the storage program differently?

10          Q.     Yes.

11          A.     Yes, sir.

12          Q.     In the answer to that you state that  
13       Santanna revised its verification scripts on June  
14       17th, July 9th, and July 22nd. Correct?

15          A.     Yes, sir.

16          Q.     What companies performed the verifications  
17       of people that are solicited by telephone to switch  
18       to Santanna as a residential gas supplier?

19          A.     What companies?

20          Q.     Yes.

21          A.     As far as naming those companies, I think  
22       we have supplied a -- that information to you in a

1       written document. I don't have the name of those  
2       companies on the tip of my tongue.

3           Q.     Okay. I believe we're talking about the  
4       same companies, those same companies that you've  
5       referred to, the ones that you -- the same companies  
6       that performed the verifications for people that are  
7       solicited by telephone, do those companies solicit  
8       people by telephone -- one moment, please.

9                   Do the same companies that perform  
10      verifications of people to switch to Santanna as a  
11      residential supplier also solicit people by  
12      telephone to switch to Santanna as a residential gas  
13      supplier?

14           A.     In some cases they do.

15           MR. KAMINSKI: May I approach?

16                   Your Honor, what I have here is responses  
17      to the Attorney General's third set of data requests  
18      numbered AG 3.3.

19           Q.     Referring to that data request, the  
20      question asks, Please identify any companies  
21      performing third-party verifications of  
22      telemarketing solicitations for Santanna. Provide



1       the name, address, and telephone number for each  
2       company, the names and titles of any employees  
3       and/or agents of such companies with whom Santanna  
4       had communications, and the time periods during  
5       which each company performed such services for  
6       Santanna. Correct?

7             A.     Yes, sir, that's the question.

8             Q.     And the response given by Santanna is that  
9       Santanna -- well, first of all there's an objection  
10      here. It says they object to this request because  
11      it's overly burdensome in the time allowed.  
12      However, it also answers, Santanna marketers are  
13      responsible for arranging for verifications, and  
14      Santanna has been unable to obtain full information  
15      in response to this request.

16             However, Santanna states that the  
17      following marketers conduct in-house verifications.  
18      And then after a semicolon it lists CCI; CSS;  
19      E-C-o-m, E-Com; CTC, MMGI; S&D; and CCU. And then  
20      it refers to CASA uses A to Z verifications, EMG  
21      uses Egosi, which is E-g-o-s-i, and EMS uses Data  
22      Exchanges. Is that correct?

1           A.     Yes, sir.

2           MR. KAMINSKI: I would ask that this document  
3 be entered into the record.

4           JUDGE ALBERS: First cross exhibit. Do you  
5 want to identify it as --

6           MR. MARKOFF: I'm sorry. Are we going to use  
7 consecutive numbers for everybody or for each party?

8           JUDGE ALBERS: For each party.

9           MR. KAMINSKI: Okay.

10          MS. BUELL: Are we going to identify this as  
11 AG/Gatlin Cross Exhibit 1?

12          MR. KAMINSKI: AG Cross Exhibit 1.

13          MR. MARKOFF: Are you crossing anybody else?

14          MR. KAMINSKI: I don't expect to use any  
15 exhibits for anybody else.

16          JUDGE ALBERS: AG Cross Exhibit 1.

17                   (Whereupon AG Cross Exhibit 1  
18 was marked for  
19 identification.)

20          JUDGE ALBERS: Any objection to admitting AG  
21 Cross Exhibit 1? Hearing none, AG Cross Exhibit 1  
22 is admitted.

1                   (Whereupon AG Cross Exhibit 1  
2                   was admitted into  
3                   evidence.)

4           MR. KAMINSKI:  Q.  So referring to AG Cross  
5           Exhibit 1, some of the same companies that solicit  
6           new customers verify those customers' intent to  
7           switch.  Correct?

8           A.  Yes, sir.

9           Q.  And Santanna or one of its agents have  
10          contracts with these companies to market Santanna's  
11          residential gas-supply service in the areas stated  
12          in Santanna's application for certification.  
13          Correct?

14          A.  In the area stated in the application for  
15          certifications, yes, sir.

16          Q.  These contracts provide that these  
17          companies are paid a commission for each customer  
18          that they sign up for Santanna service that stays on  
19          the service for 60 days.  Correct?

20          A.  A commission?  A --

21          Q.  A fee per customer?

22          A.  Fee per customer, yes, sir.

1           Q.     Does Santanna have separate contracts with  
2           these companies, the ones that perform the in-house  
3           verification, to verify the new customer's intent to  
4           switch to Santanna service?

5           A.     Do we have separate contracts with them?

6           Q.     The companies that perform in-house  
7           certification that are listed on Cross Exhibit 1, AG  
8           Cross Exhibit 1, does Santanna have any separate  
9           contract outside of the Commission contracts we  
10          discussed in the last question regarding  
11          verification of a customer's intent to change to  
12          Santanna as its residential gas supplier?

13          A.     No, sir. I'm not aware of any separate  
14          contracts that we have with those companies. The  
15          contract that we have with them calls for  
16          verification.

17          Q.     And that is the contract that pays per  
18          customer, pays commission?

19          A.     Yes, correct.

20          Q.     Under these contracts, can a customer  
21          representative of one company both solicit a new  
22          customer and verify other customers' intent to

1 switch Santanna, to Santanna service?

2 A. That is possible, I would think.

3 Q. Under these contracts, can the same  
4 company solicit a new customer and verify -- I'm  
5 sorry. Strike that one.

6 Do these companies that perform in-house  
7 verification, do they record all customer  
8 verifications?

9 A. Yes, they do.

10 Q. Have they always since the contracts to  
11 telemarket have been entered between Santanna and  
12 them or Santanna's agents and them?

13 A. The -- two of these companies -- eight of  
14 these companies have always taped verifications.  
15 That is the companies that are telemarketing  
16 companies. The two door-to-door organizations have  
17 not always taped verifications.

18 Q. Could you provide the names of those, the  
19 door to door?

20 A. That is CCI and EMG.

21 Q. EMG.

22 JUDGE ALBERS: Are those the only two

1 door-to-door companies you use?

2 THE WITNESS: Yes. It's either EMG or EMS.

3 I'm sorry. I can't remember which one of those is

4 -- one of those is a telemarketer and one of them is

5 a door to door. And I can't recall which one is

6 one.

7 MR. KAMINSKI: Q. Subject to check, would you  
8 agree that it's EMS?

9 A. Subject to -- yes.

10 Q. CCI and EMS door to door.

11 JUDGE ALBERS: Are these all the companies you  
12 use for either telemarketing or door to door?

13 THE WITNESS: Yes, sir, for the residential  
14 program it is.

15 JUDGE ALBERS: Right. Okay.

16 (Whereupon AG Cross Exhibit 2 was  
17 marked for  
18 identification.)

19 MR. KAMINSKI: Q. 2.5, Request 2.5 states,  
20 Provide all documents received by Santanna regarding  
21 contractual disputes between Santanna or its agents  
22 and any or all of the following companies or any

1 company with which Santanna's agents have contracted  
2 to provide telemarketing, door-to-door solicitation,  
3 or customer services on Santanna's behalf.

4 In that list it states Consumer Choice,  
5 Incorporated, correct, the first on the list?

6 A. Yes.

7 Q. And it also lists Energy Marketing  
8 Services, Inc.?

9 A. Yes, sir.

10 Q. The response to that states Santanna  
11 objects to this request because it's vague and  
12 ambiguous. Subject to its objections, Santanna has  
13 not received anything stating a contractual dispute.  
14 I'm sorry. Santanna states further, however, that  
15 it modified its contract with CCI and EMS to  
16 increase the fee by \$2 to cover verifications.

17 A. Yes, sir.

18 Q. And then it refers to Attorney General's  
19 data request, the response to Attorney General's  
20 Data Request 3.6. Correct?

21 A. Yes, sir.

22 MR. KAMINSKI: I would ask at this time that AG

1 Cross Exhibit Number 2 be admitted into evidence.

2 JUDGE ALBERS: Any objection?

3 MR. MARKOFF: No.

4 JUDGE ALBERS: AG Cross Exhibit 2 is admitted.

5 (Whereupon AG Cross Exhibit 2

6 was admitted into

7 evidence.)

8 (Whereupon there was

9 then had an

10 off-the-record

11 discussion.)

12 (Whereupon a short

13 recess was taken.)

14 JUDGE ALBERS: Back on the record.

15 MR. KAMINSKI: Q. Mr. Gatlin, on what is page

16 17 of my copy of your testimony, which is an answer

17 to -- is an answer to the question, Do you agree

18 that -- with Mr. Kolata's broad assertion that calls

19 such as that with Miss E...., i.e. Miss E., are

20 commonly conducted by Santanna's marketers? Do you

21 see the question I'm referring to?

22 A. Yes, sir.



1           Q.     Approximately six lines down on that it  
2     states, The tapes requested by CUB and the Attorney  
3     General show clean verifications of sales?

4           A.     Under the question, Do you think that calls  
5     such as that of Ms. E.... should --

6           Q.     No. I'm sorry.

7                     The question that starts, Do you agree  
8     with Mr. Kolata's --

9           A.     Assessment?

10          Q.     -- broad assertion? On mine it's line  
11     384.

12          MS. BUELL: I believe it's page 17, lines 373  
13     through 374 of this copy. You might check that.

14          MR. MARKOFF: I think the question is on the  
15     page before.

16          MS. BUELL: That's correct.

17          MR. MARKOFF: The question is on line 367. I  
18     think what Mr. Kaminski is referring to is 3 --

19          THE WITNESS: I'm with you now.

20          MR. KAMINSKI: Q. Okay. And approximately six  
21     lines down in the answer to that question it states  
22     tapes requested by CUB and the Attorney General show

1 clean verification of sales. Correct?

2 A. Yes, sir.

3 Q. What criteria do you use to evaluate what  
4 is a clean verification?

5 A. Whether or not the verification script is  
6 followed and the information that is presented in  
7 the verification script is presented from repeated  
8 confirmation of the sale at the appropriate  
9 confirmation points in the verification script or  
10 answer as affirmative, a positive, a yes.

11 Q. Would you include in your evaluation of  
12 what is a clean verification when the verifier  
13 explains the program in which the customer is  
14 supposed to be verified for agreeing to switch to  
15 Santanna?

16 A. Well, that could depend on the  
17 circumstance specifically that you're referring to.  
18 It could be or it could not be depending on what is  
19 stated.

20 Q. If there's a question regarding how a  
21 certain part of your billing works, would that be  
22 part of a clean verification?

1           A.     It could be or it could not be.

2           Q.     Are you stating that a verification that  
3           meets the requirements that you said was what you  
4           would use to evaluate a clean verification plus that  
5           information would be okay plus questions about the  
6           price and billing procedures?

7           A.     It could be or it could not be depending  
8           on what was stated in the verification, in the  
9           questions and answers.  It's not -- by design, the  
10          verification script is supposed to be utilized  
11          without further answers and questions being  
12          conducted.

13                     But that's not the way that some of these  
14          evolved, and that will be part of the review process  
15          to go down the road will be whether or not these  
16          verification scripts need to be required to be  
17          verbatim without any additional question/answer  
18          events occurring in the verification stage of the  
19          sale.

20          Q.     Thank you.

21                     (Whereupon there was then had  
22                     an off-the-record

1 discussion.)

2 JUDGE ALBERS: Back on the record.

3 MR. KAMINSKI: Q. In response to a customer  
4 complaint, Santanna produced the following letter.  
5 Mark that as AG Cross Exhibit Number 3.

6 (Whereupon AG Cross Exhibit 3 was  
7 marked for  
8 identification.)

9 MR. KAMINSKI: Q. Was this letter sent by  
10 Santanna?

11 MR. MARKOFF: Objection.

12 JUDGE ALBERS: Excuse me?

13 MR. MARKOFF: Is that the same one?

14 MR. KAMINSKI: Yes, we have the same one. He  
15 can answer yes or no.

16 JUDGE ALBERS: Overruled.

17 Go ahead and answer the question, sir.

18 THE WITNESS: No, it was not.

19 MR. KAMINSKI: Q. It was, however, sent by  
20 attorneys retained by Santanna. Correct?

21 A. Yes, it was.

22 Q. And is dated July 24, 2002?

1           A.    Yes, it is.

2           Q.    And this letter states by way of  
3 explanation for the customer's inability to reach  
4 Santanna personnel that Santanna's call center  
5 allocated seven people to answer phones.  Correct?

6           A.    Yes, it does.

7           Q.    And the letter also states, referring to  
8 those seven people, that is an adequate number of  
9 customer-service representatives for customer  
10 complaints given the size of Santanna's customer  
11 base.  Correct?

12          A.    Yes, it does.

13          Q.    Now, it also states that Santanna canceled  
14 her account -- the customer that is referred to  
15 here, Miss L, I guess we can refer to her as -- in  
16 accordance with her request which was made in a  
17 letter to Santanna dated June 12th.  Correct?

18          A.    Yes, it does.

19          Q.    What was Santanna's customer base around  
20 June 12th?

21          A.    Without referencing documentation, I could  
22 not tell you.

1           Q.     Could you provide a rough number?

2           A.     I prefer to look at some form of  
3     documentation to reference that. I just don't know  
4     what that number would be.

5           Q.     So it's your testimony that you can't  
6     without referencing your document tell me an  
7     approximate number of the size of the customer base  
8     that Santanna had on June 12th of this year, 2002?

9           A.     Are you referring to residential customer  
10    base? Are you referring to an overall customer  
11    base?

12          Q.     I'm referring to the customer base that is  
13    referred to in the letter.

14          MR. MARKOFF: Objection. It's Mr. Gatlin's  
15    testimony he didn't write the letter.

16          MR. KAMINSKI: Q. Could you provide the  
17    customer base, residential customer base?

18          JUDGE ALBERS: I'm going to overrule that  
19    objection.

20          MR. MARKOFF: Okay.

21          THE WITNESS: Without referencing a document, I  
22    couldn't give you a good number.

1           MR. KAMINSKI:  Q.  Okay.  Referring to what I  
2           have as page 31 of your testimony, it's an answer to  
3           the question, One of the greatest concerns raised by  
4           Miss Howard is Santanna's ability to handle customer  
5           calls and inquiries.

6           MR. LEINBERGER:  What page is it?

7           MR. KAMINSKI:  It's 31 on my document.

8           THE WITNESS:  Page 31?

9           MR. KAMINSKI:  Q.  Page 31.

10          A.     And the line again?

11          Q.     On mine it's 697.

12          MR. MARKOFF:  I'm sorry?

13          MR. KAMINSKI:  697.

14          MR. MARKOFF:  Could you read the line again to

15          --

16          MR. KAMINSKI:  Yeah.  The question states, One  
17          of the greater concerns raised by Miss Howard is  
18          Santanna's ability to handle customer calls and  
19          inquiries.

20          MR. MARKOFF:  That's line 660.

21          MR. KAMINSKI:  Q.  Okay.  Approximately three  
22          lines down from that question, which counsel states

1 is at 660, your testimony states that your call  
2 center now has hired 17 additional employees?

3 A. That Santanna has hired 17 additional  
4 employees.

5 Q. Are all of these call-center employees  
6 allocated to receiving complaints or requests for  
7 termination?

8 A. At times -- the 17?

9 Q. Yes.

10 A. At times I would think we have had as many  
11 as 17 people addressing those complaints or issues  
12 or messages that were left either in a combination  
13 of taking incoming calls and others conducting  
14 outbound calls to recommunicate with people who had  
15 previously been unable to communicate with someone  
16 at Santanna in the customer-service department.

17 Q. So you're saying that some of the 17 were  
18 receiving inbound calls whereas others were  
19 returning calls?

20 A. Correct.

21 Q. So how many total employees, call-center  
22 employees are allocated to receiving complaints and



1 requests for termination?

2 A. Incoming?

3 Q. Yes.

4 A. I believe there's a continuous -- in the  
5 current system I think we have a continuous  
6 limitation of ten people taking those inbound calls  
7 through the call center. And the goal is to have  
8 those ten stations manned at all times during  
9 business hours.

10 Q. Now, in order for a customer that is  
11 enrolled by Santanna to terminate their service with  
12 Santanna, a customer must contact Santanna.  
13 Correct?

14 A. Correct.

15 Q. And Santanna has a current customer base  
16 as stated in your testimony at page 34, according to  
17 my numbers, maybe 33 for you, is 38,027. Correct?

18 A. As of the time of this testimony, that  
19 should have been a correct number.

20 Q. And Santanna has enrolled more than 52,000  
21 people. Correct?

22 A. I think that's a correct number.

1           Q.    Do you need to check your testimony?  I  
2   have it on page --

3           A.    No.  I think that's a correct number or  
4   thereabouts.

5           Q.    So nearly 14,000 people have had to  
6   contact Santanna in order to no longer be enrolled  
7   as Santanna customers?  Strike that question.

8                   When are bills sent out to customers, gas  
9   bills?  Is it a certain time of the month?

10          A.    It can range all through the month  
11   depending on when the customer's billing cycle ends.

12          Q.    Is it your testimony that termination  
13   creates an additional burden for Santanna to address  
14   customer inquiries and process cancellations which  
15   have required the use of extraordinary resources by  
16   Santanna?

17          A.    What page are we on now?

18          Q.    Just a moment.

19               MR. MARKOFF:  Mr. Kaminski, I believe you're  
20   probably somewhere in the neighborhood of 267 and  
21   268 line numbers.

22               MR. KAMINSKI:  Yes.  On mine it's line 278.  So

1           266, you said?

2           MR. MARKOFF: 266 through 268 I think if you  
3 read the full sentence. I don't recall --

4           MR. KAMINSKI: I did.

5           Q. Do you see that testimony?

6           A. Yes, sir.

7           Q. Do you consider ten call-center employees  
8 allocated to receiving complaints or requests for  
9 termination to be extraordinary?

10          A. That statement attempts to paint a picture  
11 that --

12          Q. Can you answer the question I asked? Is  
13 ten allocated call-center employees for receiving  
14 complaints and termination extraordinary?

15          A. No.

16          Q. And on page 33, at least my 33, in answer  
17 to the question, Would Santanna agree to Miss  
18 Howard's call center recommendation --

19          A. We're on page 33?

20          Q. Yes. It's my line 743. It would probably  
21 be earlier in yours.

22          MS. BUELL: Actually, it's page 31, line 700.

1 MR. KAMINSKI: Q. I stand corrected.

2 A. Yes, I have it.

3 Q. The very last sentence of that answer  
4 states, If Santanna can learn more about call-center  
5 operations, I may be able to provide further input.  
6 Correct?

7 A. The last sentence of that paragraph?

8 Q. Yes.

9 A. Correct.

10 Q. Referring to line 83 of your testimony,  
11 which is on page 8 of mine, it's in answer to, "What  
12 feedback did Santanna receive from its customers at  
13 that time?"

14 A. Page 8, line what?

15 Q. Line 83 -- 183.

16 A. 183.

17 MR. MARKOFF: Line 165.

18 MR. KAMINSKI: Q. 165. Okay.

19 A. 165.

20 Q. Is where the question starts.

21 A. I'm there now. What particular sentence  
22 were you referencing?

1           Q.    Approximately halfway down the first --  
2           the paragraph that is the answer to that, you state,  
3           "Historically, with programs that do not have  
4           storage level requirements, Santanna has attempted  
5           to bring a new start customer up to storage target  
6           over a three-month period"?

7           A.    Yes, sir.

8           Q.    Further it states, Customer starting  
9           service in June in the residential programs had to  
10          achieve these storage levels in a month.  Correct?

11          A.    Yes, sir.

12          Q.    Okay.  Without these targets, Santanna  
13          would bring these customers up to storage in a  
14          three-month period.  Correct?

15          A.    Typically with a commercial and industrial  
16          program where there are no storage target levels  
17          that we have to honor, we would bring those  
18          customers up to the required storage level over a  
19          three-month period.

20          Q.    So why didn't you bill the new residential  
21          customers for that significant storage level that  
22          you referred to in the second sentence of what I

1       quoted over a longer period such as a three-month  
2       period?

3           A.     Because we were required to deliver the  
4       gas in that one month.

5           Q.     Now, you delivered that gas to NICOR.  
6       Correct?

7           A.     Correct.

8           Q.     And the only gas that's actually delivered  
9       to the customer is what they use.   Correct?

10          A.     The only gas that's actually used by the  
11       customer is what they use.   That's not what's  
12       delivered to them.

13          Q.     But they don't receive that gas.   That is  
14       put in storage with NICOR.   Correct?

15          A.     On their behalf, correct.

16          Q.     Now, other gas utilities purchase gas in  
17       the summer when prices are traditionally lower and  
18       store and withdraw in the winter when prices are  
19       traditionally higher.   Right?

20          A.     Other utilities?

21          Q.     Other gas utilities.

22          A.     Is that a comparison of a regulated

1 utility to a deregulated gas program? I'm missing  
2 something. Sorry.

3 Q. Okay. Let's take NICOR, for instance, or  
4 People's. Is it your understanding that they  
5 purchase gas in the summer when the prices are  
6 lower, store that gas and withdraw it in the winter  
7 when prices are traditionally higher?

8 A. Yes, sir.

9 Q. And Santanna bills its customers for all  
10 gas either used or purchased for storage. Correct?

11 A. Yes, sir.

12 Q. Utility -- NICOR or People's or North  
13 Shore bill customers for just usage, correct, just  
14 for the gas that is used each month?

15 A. NICOR the utility? Which NICOR?

16 Q. NICOR the utility. I'm referring -- from  
17 here on out, when I say NICOR, I'm referring to the  
18 utility.

19 A. Yes, they do.

20 Q. And utilities don't bill customers for the  
21 gas they store in the summer until those customers  
22 use that gas in the winter. Correct?

1           A.     That's my understanding.

2           Q.     Now, on my page 24 --

3           A.     You do understand they don't bill them --

4           Q.     I didn't ask a question.

5                     Referring to at least my page 24, in  
6     answer to a question, "Mr. Kolata also testified  
7     that Santanna's storage program has to explain  
8     better the difference between Santanna's program and  
9     that of utilities" --

10          A.     Which question are you on?

11          Q.     That's what I was stating. The question  
12     that starts, Mr. Kolata also testified that  
13     Santanna's storage program.

14                 MS. BUELL: Page 22, line 503.

15                 MR. KAMINSKI: Thank you.

16          Q.     Halfway down that answer, it's your  
17     testimony that utilities and other gas marketers  
18     deliver gas to storage but charge customers for gas  
19     when it's withdrawn in the winter at typically  
20     higher rates. Correct?

21          A.     Yes, sir.

22          Q.     Do you understand that People's Gas and



1 North Shore's gas rates are governed by Section 9-22  
2 of the Public Utilities Act?

3 A. That's right.

4 Q. And Part 525 of the Commission's rules?

5 MR. MARKOFF: Objection. Calls for legal  
6 conclusion.

7 MR. KAMINSKI: I'm just asking his  
8 understanding.

9 JUDGE ALBERS: Overruled.

10 THE WITNESS: I understand that it's regulated.

11 MR. KAMINSKI: Q. Do you know that under the  
12 purchased gas adjustment proceeding for People's and  
13 North Shore total cost of gas is used to determine  
14 the gas-supply rate for their customers?

15 A. I don't know the details of how the price  
16 is determined.

17 MR. KAMINSKI: I'm sorry. Could I hear that  
18 back again, the answer?

19 JUDGE ALBERS: Read the question too, please.

20 (Whereupon the last question  
21 and answer were read  
22 back by the reporter.)

1 MR. KAMINSKI: Okay. Thank you.

2 Q. Do you know that the cost of gas withdrawn  
3 from storage is included in determining People's and  
4 North Shore's gas charge for each year?

5 A. I do not know that. I would assume it to  
6 be.

7 Q. Would you agree that the total cost of gas  
8 for any company would be the cost of that gas, the  
9 cost of that gas when it was purchased?

10 Would you like me to restate the question?

11 A. Please.

12 Q. Would you agree that the total cost of gas  
13 for any company would be the cost that the gas was  
14 purchased at?

15 A. In the month that the gas was purchased?

16 Q. Within a year. If the total cost of gas  
17 in a year is a certain number, that would be  
18 determined by what that gas for that year was  
19 purchased at. Would you agree with that?

20 A. Probably not.

21 Q. Let me run through a simple example. This  
22 is just an example.

1                   If 20 bcf of gas was purchased in the  
2                   summer for \$2.00 per bcf and 20 more was purchased  
3                   in the winter for \$8 per bcf, what would the total  
4                   cost of the gas purchased be?

5                   MR. MARKOFF: Objection, relevance and no  
6                   reason to go through hypotheticals. And if we're  
7                   going to make him do math, ask that the witness have  
8                   something to write this stuff down.

9                   JUDGE ALBERS: Overrule the objection.

10                  MR. KAMINSKI: Q. Yeah. If you need time --

11                  A. Mathematically, if I understood what you  
12                  stated, I guess it would be 8 plus 2 divided by 2,  
13                  \$5.00. Did you say \$2.00 --

14                  Q. I'm sorry. I didn't ask for the average.  
15                  I asked for the total cost.

16                  A. Well, you better give me a calculator.  
17                  \$2.00 a unit -- oh, you was talking about --

18                  Q. There's 20 units of gas at 2.

19                  A. I thought you said 20 --

20                  Q. This is the question I asked.

21                         If 20 bcf of gas were purchased in the  
22                         summer for \$2 per bcf, so it evens out, and 20 more

1       were purchased in the winter where the cost was \$8  
2       per bcf, what would be the total cost of the gas?

3               Would you accept subject to check that  
4       that would be \$120? I'll amend that.

5               A.     2 times 20 plus 8 times 20, yeah.

6               Q.     2 times 20 and 8 times 20. \$200?

7               A.     160 and 40. 200, yeah.

8               Q.     If Santanna bills its customer for stored  
9       gas in the summer rather than when it's withdrawn in  
10      the winter whereas the utilities don't bill  
11      customers for gas that they store in the summer  
12      until it's used in the winter, doesn't Santanna's  
13      billing procedure result in Santanna being paid  
14      months earlier for its stored gas than the utilities  
15      are paid for their stored gas?

16              A.     Being paid a month earlier?

17              Q.     Months earlier.

18              A.     Than the utility bills for their stored  
19      gas?

20              Q.     You stated --

21              A.     Yes, it does.

22              Q.     It does?

1           A.     Santanna sells the gas when Santanna buys  
2     the gas.

3           Q.     Now, assume that Santanna and the  
4     utilities pay the same amount for gas in the summer  
5     and charge the same amount for that whenever it is  
6     billed. This is an assumption. Under that  
7     assumption, doesn't Santanna get paid for the stored  
8     gas months earlier than the utilities?

9           A.     Yes, they do.

10          Q.     Are you familiar with the phrase "time  
11     value of money"?

12          A.     Yes, sir.

13          Q.     And that refers to money has generally a  
14     greater value if you can obtain it right away, get  
15     an advance on something versus being paid six months  
16     later?

17          MR. MARKOFF:   Objection. Was there a question  
18     there? Are you testifying?

19          MR. KAMINSKI:   I'm just asking to confirm his  
20     understanding of time value of money.

21          MR. MARKOFF:   I'd object to that. I suppose  
22     there would have to be a foundation laid that he has

1       some sort of economic understanding --

2               MR. KAMINSKI:  He's already stated that he  
3       understands it.  I'm sorry, Your Honor.

4               JUDGE ALBERS:  I'll overrule the objection.

5               MR. KAMINSKI:  Q.  So doesn't Santanna's  
6       billing practice net Santanna the time value of  
7       money between the summer purchase of stored gas and  
8       the winter usage of stored gas in comparison to the  
9       utilities that are not paid for their stored gas  
10      until it is withdrawn and used by the customer?

11              A.  No, sir, it doesn't.  It might net us more  
12      than that if we sold it at summer prices and then  
13      billed it at winter prices.  But we sell it at  
14      summer prices and the customer gets to use it in the  
15      winter at the summer price they bought it at.

16              Q.  Is it your understanding that utilities  
17      are allowed to charge more than the price that they  
18      paid in the summer for their gas when they withdraw  
19      it in the winter?

20              A.  I've already testified that I don't know  
21      the calculation methodology that goes into what is  
22      their cost.  I have heard that they get charged

1       their cost of gas, but I know nothing that says that  
2       their cost of gas is limited to the fact that they  
3       bought it for \$4.00 and that that's all that they  
4       can put into the cost category. I don't know the  
5       details of how they calculate costs.

6           Q.     Well, couldn't one say that Santanna bills  
7       for gas in advance of when the customer uses it?

8           A.     Santanna bills for the gas when it sells  
9       the gas to the customer.

10          Q.     But in advance of when the customer uses  
11       it?

12          MR. MARKOFF:  Objection, lack of foundation as  
13       to when is the sale.

14          THE WITNESS:  Santanna bills for the product  
15       when it delivers the product --

16          JUDGE ALBERS:  Don't answer yet.

17                 I'm trying to understand your objection.

18          MR. MARKOFF:  The question I believe was when  
19       Santanna, do they bill for the gas before the  
20       customer uses it. I think there at least has to be  
21       a seasonal definition of when that is.

22          MR. KAMINSKI:  I'm happy to elaborate.

1 JUDGE ALBERS: Yeah. Like some details with  
2 your hypothetical.

3 MR. KAMINSKI: Q. Couldn't one say that  
4 Santanna bills a customer in June for gas in advance  
5 of when the customer uses all of the gas that it is  
6 billed for?

7 A. That's correct.

8 Q. Couldn't one also say that under  
9 Santanna's billing practices, a customer pays in  
10 June for a substantial amount of gas in advance of  
11 their usage of that gas?

12 A. It would depend on when that customer,  
13 that hypothetical customer started in the program.  
14 If they start in June, their requirements to fill  
15 storage is a greater number than it would be had  
16 they started in May, for instance, at the -- closer  
17 to the beginning of the injection season.

18 And that number would be larger in June.  
19 I don't know what your definition of much larger is.  
20 If they used one and they were sold three and two  
21 went into storage, is that the much larger you're  
22 talking about or are you talking about using 25 and



1       50 goes into storage or --

2           Q.     You've already agreed that Santanna bills  
3     for gas in advance of when customers use it.

4     Correct?

5           A.     I agreed that we bill for it when we sell  
6     it to the customer.

7           Q.     And the customer uses it both then and  
8     later?

9           A.     Yes.

10          Q.     Couldn't you also say that under  
11     Santanna's billing practices, a customer pays for  
12     more gas -- I'm saying this is in June, a June bill  
13     -- in advance of their using that gas they're billed  
14     for in June?

15          A.     They pay for the gas that they use and the  
16     gas that goes into their storage, yes, they do.

17          Q.     You state on page 23 in your testimony in  
18     answer to a question, "Mr. Kolata also testified  
19     that Santanna should detail how stored gas will be  
20     priced in the winter," it's a four-line answer.

21          MR. MARKOFF: I think this is on page 22, line  
22     490.

1 THE WITNESS: Yes. I see that.

2 MR. KAMINSKI: Q. And you state that gas is  
3 invoiced when it is delivered and stored. So it is  
4 already paid for by the time it is withdrawn from  
5 storage. Correct?

6 A. Yes, sir.

7 Q. Are there any additional costs for storage  
8 or for withdrawing of that gas?

9 A. Any additional costs? Anything that  
10 Santanna bills the customers for withdrawing of that  
11 gas?

12 Q. Yes.

13 A. I'm not aware of anything that Santanna  
14 bills that customer associated with the withdrawal  
15 of that gas.

16 Q. Okay. Thank you.

17 A. When we're referring to Santanna billing,  
18 I'm talking about the Santanna charge.

19 Q. I understand.

20 A. Okay.

21 Q. How long does it take for a customer to be  
22 terminated by Santanna once the customer has

1 informed Santanna of the customer's wish to be  
2 terminated?

3 A. We process that termination immediately,  
4 to the best of my knowledge. So in a day or two  
5 after a customer terminates, they should be built  
6 into a data file that would be submitted to NICOR  
7 for the termination process to begin at NICOR.

8 Your question was how long does it take for  
9 Santanna --

10 Q. For a customer to be terminated by  
11 Santanna.

12 A. So many words are not real explicit. But  
13 once we've submitted that file to NICOR and NICOR  
14 defines to us what the last day of service for that  
15 customer should be as a Santanna customer, that date  
16 may be anywhere from a week, ten days, out to 40  
17 days from the date of the data file submittal to  
18 NICOR. When the customer reaches --

19 Q. So the customer --

20 A. -- that termination date, then they would  
21 be switched to NICOR service on that date or the  
22 following date -- following day.

1           Q.    Now, this assumes that the customer --  
2           strike that.

3                   Does Santanna continue to bill the  
4           customer through to this termination?

5           A.    NICOR continues to require that we deliver  
6           to that customer through their last day of service  
7           with Santanna. So we continue to deliver as  
8           required, and we continued to bill for those  
9           deliveries.

10          Q.    And those deliveries can include storage?

11          A.    Yes, they can. They do.

12          Q.    Now, Santanna recently changed how it  
13               credits terminated Santanna customers for the gas  
14               that the customer did not use. Correct?

15          A.    Recently changed. Could you be more  
16               explicit?

17          Q.    Santanna used to credit customers for 90  
18               percent of their current value of gas as of the date  
19               of termination, correct, is its past practice?

20          A.    That was -- the agreement terms was that  
21               the cash-out value of the gas would be at 90 percent  
22               of the index effective -- the posted index at the

1 time of cancellation as of the last day of service.

2 Q. And currently gas remaining in the  
3 customers' accounts is determined and Santanna  
4 credits its former customers for volume of gas at  
5 the rate the customer paid for the gas. Correct?

6 A. That's only with the residential program  
7 as related to the fact that there's been so many  
8 issues to that.

9 Q. So it hasn't been changed for other  
10 customers?

11 A. No, sir.

12 Q. You state in testimony which is my page 8  
13 that all relevant times to date --

14 MS. NORINGTON-REAVES: It's page 9, line 206  
15 and 207 of your version. Page 9, lines 206 and 207  
16 of your version.

17 THE WITNESS: Okay. I'm there.

18 MR. KAMINSKI: Q. It states that, "At all  
19 relevant times to date, Santanna has cashed the  
20 customers out, that is bought the gas back, at  
21 prices higher than the current market." Correct?

22 A. Correct.

1           Q.     Under that method of crediting former  
2 customers, you return the exact amount of money that  
3 Santanna originally charged the customers for the  
4 excess gas.   Correct?

5           A.     We didn't charge them for any excess gas.  
6 We charged them for stored gas.

7           Q.     You are returning the exact amount that  
8 Santanna originally charged the customer in excess  
9 of what they used.   Correct?

10          A.     Correct.

11          MR. KAMINSKI:   Just a moment.

12                 Thank you.   That's all I have.

13          JUDGE ALBERS:   Did you intend to offer AG Cross  
14 Exhibit 3?

15          MR. KAMINSKI:   Yes, I did.

16          JUDGE ALBERS:   Okay.   Any objection?

17          MR. MARKOFF:   Yeah.   Objection as to lack of  
18 foundation because it was not written by Mr. Gatlin.

19          MR. KAMINSKI:   It was written by an agent of  
20 Santanna Energy Corporation which Mr. Gatlin is  
21 representing as a sole witness.

22          MR. MARKOFF:   That was --

1 JUDGE ALBERS: I'm sorry. I didn't hear you.

2 MR. MARKOFF: I don't think that was fully  
3 testified to, and I think the agent is more  
4 appropriately put on the stand to lay a foundation.

5 JUDGE ALBERS: I'm going to overrule the  
6 objection.

7 I trust when you get back to the court  
8 reporter, you'll provide a proprietary and a public  
9 version?

10 MR. KAMINSKI: Yes, I will.

11 JUDGE ALBERS: Okay. Any other objections?  
12 Okay. AG Cross Exhibit 3 is admitted.

13 (Whereupon AG Cross Exhibit 3 was  
14 admitted into evidence.)

15 JUDGE ALBERS: And actually, I don't believe  
16 you've appeared before me since you've been married.  
17 Is it Norington-Reaves or --

18 MS. NORINGTON-REAVES: Norington-Reaves. It  
19 doesn't matter. You can call me Reaves. You can  
20 call me Norington. I don't care. If you're more  
21 accustomed to calling me Norington, that's fine.

22 JUDGE ALBERS: I can change.

1                   Ready to begin your cross. And when we  
2                   get around noon, you could break and then resume  
3                   after lunch.

4                   MS. NORINGTON-REAVES: That would be fine. I  
5                   would only ask for about two minutes. I realize  
6                   that, just to facilitate this whole process, it  
7                   might be easier if the witness has a copy of this  
8                   chart that was provided to us by counsel that  
9                   basically lists out various documents and their  
10                  dates of usage.

11                  I'm going to be asking him questions  
12                  related to this. So it would probably be easier if  
13                  he can have a copy. So if we could just stop so I  
14                  can make some copies, I would appreciate it.

15                               (Whereupon a short recess was taken.)

16                  JUDGE ALBERS: Back on the record.

17                               CROSS-EXAMINATION

18                  BY MS. NORINGTON-REAVES:

19                  Q. Good morning, Mr. Gatlin.

20                  A. Good morning.

21                  Q. I met you earlier, but just to reintroduce  
22                  myself, I'm Karin Norington-Reaves and I represent



1 the Citizens Utility Board. I have some questions  
2 for you. I'm going to try hard not to keep you on  
3 all day.

4 Page 6 of your rebuttal testimony -- and I  
5 believe that I have the appropriately numbered copy.  
6 On page 6 at approximately line 135 you say that  
7 Santanna's program was modeled on its longstanding  
8 commercial and industrial natural-gas business.

9 Did Santanna investigate or research any  
10 residential programs similar to the one Santanna  
11 intended to launch here in Illinois, any other  
12 residential programs anywhere?

13 A. No, ma'am, we did not.

14 Q. Okay. You talked earlier about the  
15 decision to telemarket, and I believe you used the  
16 term "mass marketing" in your testimony. Who made  
17 the decision to telemarket?

18 A. Ultimately the decision resides with me, I  
19 guess, but it's after a lot of discussions and  
20 evaluations with other staff members in the Company  
21 before we finally reached that decision.

22 Q. And when you were talking about this, you

1       said that you had actually engaged in a  
2       telemarketing program for about two to three years.  
3       And if I'm correct, that was with respect to small  
4       commercial customers?

5             A.     Commercial and industrial.

6             Q.     Okay.   But small?

7             A.     Correct.

8             Q.     All right.   And you said that you  
9       referenced -- and I'm trying to use as close as  
10      possible your exact language.   You said that you  
11      referenced anything that was applicable.

12            Can you tell me what exactly you,  
13      quote/unquote, referenced with respect to mass  
14      marketing to the residential market here in  
15      Illinois?

16            A.     I can't give you a list of those things  
17      that are referenced.   Are you referring to acts  
18      that might govern --

19            Q.     No.   I'm -- my question is based on what  
20      you stated earlier.   You said that in preparation or  
21      in preparation to telemarket, you referenced  
22      anything applicable.   So I'm asking you what you

1       meant by that terminology "referenced" and what  
2       exactly it was that you reference.

3           A.     Well, we tried to look at the size of the  
4       marketplace in Illinois, how many residential  
5       customers exist in the state of Illinois behind  
6       NICOR, behind People's, behind North Shore.

7                   We tried to gather applicable information  
8       on the consumption levels of residential customers,  
9       the range, the average. We attempted to evaluate  
10      whether or not the economics of the program, making  
11      comparisons looking at that volume, looking at what  
12      that customer would be paying to the utility for  
13      that cost of gas, what history would indicate that  
14      we might structure a program cost-wise to sell gas  
15      to those customers.

16                   Just tried to determine that it appeared  
17      that there could be a sound economic program  
18      structure. We tried to look at what we thought the  
19      marketing costs might be, what we thought the effect  
20      would be on the internal technology systems, what  
21      modifications we felt like had to be made to the  
22      technology systems to allow us to process a range of

1 new customer additions. We tried to make some  
2 judgment calls on what the staff requirements  
3 increases might be.

4 Q. Okay.

5 A. We could probably ad lib a lot more things  
6 as you get down into more minutia of the detail.

7 Q. Okay. That's fine. Thank you.

8 With respect to telemarketing in  
9 particular, did Santanna, for example, review  
10 Illinois telemarketing laws?

11 A. I think that we have reviewed Illinois  
12 telemarketing laws probably more than once.

13 Q. I'm asking in anticipation -- but I'm  
14 asking particularly prior to beginning the  
15 telemarketing campaign, did anyone review Illinois  
16 telemarketing laws or research --

17 A. It's my memory that we had reviewed those  
18 prior to beginning the residential --

19 Q. Okay. Do you recall who reviewed those?

20 A. Who all reviewed those?

21 Q. Is there anyone on your staff who would be  
22 responsible for that oversight?

1           A.     It might be done by various people.

2           Q.     What department, for example?

3           A.     I might look at it.  Doug Cueller, vice  
4 president in Illinois, might be exposed to a copy of  
5 those regulations when we're looking at the  
6 constraints or the terms and conditions of an  
7 existing regulation as it relates to a program we're  
8 about to enter into or considering entering into.

9                     Greg Rabaey, vice president of technology  
10 in Austin, might take a look at that.  Pam Durnin is  
11 a manager in our Austin office that works hand in  
12 hand a lot with Mr. Rabaey and I to gather data,  
13 look at management reports, etc., etc.  That's one  
14 of the things -- she's very knowledgeable the  
15 internal mechanisms of Santanna.

16          Q.     Do any of these people have previous  
17 experience in mass marketing?

18          A.     Prior to the residential program, the  
19 experience that we would have had in mass marketing  
20 would have been with the small commercial and  
21 industrial programs, not with residential.

22          Q.     Now, when you testified previously, you

1       talked about the telemarketing program with the  
2       small commercial. I don't recall that you  
3       identified that as mass marketing. Are you now  
4       saying that the marketing campaign that was  
5       undertaken with respect to small commercial and  
6       industrial customers was mass marketing in a way  
7       that's similar to the mass marketing that was done  
8       for the residential program?

9           A. I think the correct answer to that is yes,  
10       with the exception that we had no door-to-door  
11       involvement in the commercial and industrial.

12          Q. Can I ask how many small commercial and  
13       industrial customers you have?

14          MR. MARKOFF: Objection, relevance.

15          MS. NORINGTON-REAVES: It's relevant by way of  
16       comparison. He just established that he did mass  
17       marketing in both markets.

18          JUDGE ALBERS: Overruled.

19          THE WITNESS: Approximately 12,000, 13,000,  
20       11,000, something in that range.

21          MS. NORINGTON-REAVES: Q. Did anyone on your  
22       staff review federal telemarketing laws before

1 initiating the telemarketing campaign in Illinois?

2 A. I couldn't say definitively that we did,  
3 but there have been discussions with -- internally  
4 and I believe with counsel over laws applicable to  
5 telemarketing, faxing, anything that would impact  
6 our ongoing business activities.

7 Q. But with respect to those types of  
8 discussions having taken place prior to beginning of  
9 the mass marketing, I believe you said you couldn't  
10 say definitively that a review of the federal  
11 telemarketing laws had actually been conducted?

12 A. I couldn't say that definitively.

13 Q. Okay. Who created the scripts that were  
14 used?

15 MR. MARKOFF: Objection, foundation.

16 JUDGE ALBERS: I'm sorry?

17 MR. MARKOFF: Objection, lack of foundation.  
18 Which scripts?

19 MS. NORINGTON-REAVES: I'm not talking about a  
20 particular script. I'm talking about the scripts  
21 that were generally used for telemarketing. I don't  
22 see that there's any --

1 JUDGE ALBERS: Are you speaking of the ones  
2 that we've seen exchanged in discovery?

3 MS. NORINGTON-REAVES: Correct. And I believe  
4 they're even attached to his testimony as exhibits.

5 MR. MARKOFF: The answer might not be the same  
6 for each is all I'm saying.

7 MS. NORINGTON-REAVES: Well, he can tell me  
8 that.

9 JUDGE ALBERS: Overruled.

10 MS. NORINGTON-REAVES: Q. Do you need the  
11 question repeated?

12 A. Who created --

13 Q. The scripts that were used for the  
14 telemarketing campaign.

15 A. Probably more than one finger involved in  
16 that. I think Mr. Cueller in the Chicago office  
17 typically involved in that sort of thing. I'm  
18 involved with reviewing those things, suggesting  
19 alterations to them. That's probably the primary  
20 group. Greg Rabaey, Pam Durnin look at those,  
21 review them, give feedback on them.

22 Q. So as to -- if I were to show you a



1 particular script, could you identify who created  
2 it, who approved it, who reviewed it?

3 A. No, I couldn't.

4 Q. Okay. And just so that I understand you  
5 properly, others might have reviewed it in addition  
6 to yourself. If, for example, Mr. Cueller created  
7 it, Miss Durnin and Mr. Rabaey or yourself might  
8 have reviewed the script?

9 A. Correct. And there could be others in the  
10 Chicago office, the Hinsdale office that might be  
11 involved in the review process.

12 Q. Okay. In your testimony -- well, strike  
13 that.

14 You talked about the fact that you've made  
15 changes in scripts in response to what you termed  
16 customer feedback. And would it be safe to say that  
17 feedback also includes customer complaints?

18 A. Yes.

19 Q. Okay. What were some of the problems that  
20 you identified in the scripts that required -- that  
21 necessitated you to change the scripts?

22 A. First and foremost it's probably safe to

1 say that the lack of education about the storage  
2 aspect of the program seemed to be the biggest thing  
3 that needed to be added to the scripting to educate  
4 the customer on. The inability of the customer to  
5 gain access to Santanna customer-service  
6 representatives.

7 Q. I'm asking about --

8 A. Oh, just the scripts?

9 Q. -- what necessitated changes to the  
10 scripts.

11 So you said, just to recap, a lack of  
12 education regarding the storage program. Was there  
13 anything else?

14 A. Well, if you're trying to isolate them  
15 into separate issues, it's very hard to do that.  
16 But obviously once the storage thing, which appeared  
17 to be the biggest issue, became an issue and  
18 increased the number of customers that wanted to  
19 cancel the program because they didn't feel like  
20 they had been properly educated about the storage  
21 aspect of it.

22 Then the cash-out part of the program for

1 the storage gas became an issue. We responded to  
2 that.

3 Q. Uh-huh.

4 A. You know, those are two of the biggest  
5 things that I could think of.

6 Q. I'm going to show you a document. I'll  
7 give it to you first so you can look at it.

8 It's been identified as SES ICC 166,  
9 Santanna's numbering. Would you just take a moment  
10 to review it, please. Call this CUB Cross 1.

11 (Whereupon CUB Cross Exhibit 1  
12 was marked for  
13 identification.)

14 JUDGE ALBERS: Just out of curiosity, the SES  
15 ICC, that's just an internal Santanna identification  
16 system?

17 MR. MARKOFF: If I may, that's the Bates stamp  
18 that my office put on the documents we produced in  
19 this proceeding.

20 JUDGE ALBERS: Okay. So ICC does refer to  
21 Illinois Commerce Commission?

22 MR. MARKOFF: It does.

1 JUDGE ALBERS: Okay. Not that it matters.

2 MS. NORINGTON-REAVES: Q. Directing your  
3 attention -- well, let me just identify this  
4 document. This is what appears to be an e-mail  
5 chain, if you will. Have you ever seen this  
6 document? Were you copied on any of these e-mail  
7 messages? Do you know?

8 A. This doesn't look familiar.

9 Q. Okay.

10 A. That doesn't mean that I may not have been  
11 copied on it.

12 Q. I understand.

13 I'd like to direct your attention to the  
14 third entry at the bottom. It says sent May 22nd to  
15 John McKendry. Further up the page, however,  
16 there's Doug Cueller's name, who you've identified  
17 as a Santanna employee. I also see that it appears  
18 that this message was also forwarded to Pam Durnin,  
19 who was someone else that you identified as a  
20 Santanna employee.

21 Directing your attention to this last  
22 entry, however, it states, Mr. McKendry, my name is

1 blank. I work in the call center at NSG. I had a  
2 phone call from Santanna Gas on 5/21/02. The  
3 conversation started out, I have a really good deal  
4 for you on the price of natural gas, all that I need  
5 is your meter number and account number.

6 When I asked about the really good deal,  
7 he in turn repeated that he would take care of it,  
8 don't worry, just give him these numbers. I asked  
9 one more time about this deal, to no avail. I  
10 finally said that I worked for People's Energy and I  
11 didn't appreciate being treated this way and I  
12 needed more information before I gave him any info.  
13 He then hung up on me.

14 And the last part, I just wanted you to  
15 know how the -- and it's cut off there.

16 MR. MARKOFF: I'm sorry. If I may, there is  
17 actually an additional line. The end of that  
18 sentence reads, Customers are being treated by  
19 Santanna Gas, thanks.

20 MS. NORINGTON-REAVES: Okay. That's fine.

21 Q. I'm specifically directing your attention  
22 to the statement that says, All that I need is your

1 meter number and account number. In your previous  
2 answer you're explaining that the primary thrust of  
3 the script changes was due to the lack of education  
4 regarding the storage program.

5 Is it also true that scripts were changed  
6 because customers were being asked for confidential  
7 information prior to confirmation that they intended  
8 to switch?

9 MR. MARKOFF: Objection, lack of foundation.  
10 Lack of foundation. All customers? Any instances?

11 MS. NORINGTON-REAVES: Your Honor, I believe  
12 I've just taken great efforts to lay a foundation as  
13 to the question regarding the customers being asked  
14 for confidential information. If Mr. Gatlin doesn't  
15 know the answer --

16 JUDGE ALBERS: Are you worried about all  
17 customers being treated that way? Is that what  
18 you're --

19 MR. MARKOFF: I think it would be a different  
20 question if it were, "Are you aware of any customers  
21 in such an instance?" As opposed to how broadly the  
22 question was asked.

1 MS. NORINGTON-REAVES: The foundational  
2 question several minutes ago was, What facilitated  
3 or precipitated the change in scripts? He answered  
4 that at least the biggest problem was the lack of  
5 education regarding the storage problem.

6 And I'm asking if an additional problem was  
7 also customers being asked for confidential  
8 information prior to confirming their intent to  
9 actually switch gas suppliers.

10 JUDGE ALBERS: Are you suggesting that all  
11 customers were asked that?

12 MS. NORINGTON-REAVES: I'm not suggesting that  
13 all customers are asked that. I'm asking if that  
14 was a motivating factor in scripts being changed.

15 JUDGE ALBERS: Okay.

16 MR. MARKOFF: As stated, I have no objection.

17 JUDGE ALBERS: Okay.

18 THE WITNESS: I apologize.

19 I'm not aware that we had script changes  
20 addressing our request for data prior to their  
21 agreement to change. This is not a Santanna script.  
22 I don't know what this is. This is some individual

1       that -- called Mr. McKendry, and obviously it was a  
2       People's staff member or at least they said they  
3       were a People's staff member.

4               And I mean, this doesn't -- there's not  
5       even a line in here that that would be an excerpt  
6       from anything I recognize as a Santanna script. So  
7       I don't know what the circumstances would be for  
8       somebody to approach a prospective customer on  
9       behalf of Santanna using this approach. That's --

10              MS. NORINGTON-REAVES: Q. All right. At this  
11       point I'm going to direct you to exhibits attached  
12       to your testimony, I believe, if you just give me  
13       one moment. Okay.

14              Looking at Exhibit 1.10 attached to your  
15       testimony, to your rebuttal testimony -- scratch  
16       that.

17              A.     1.10?

18              Q.     Scratch that, sir. I cited the wrong  
19       document.

20              Okay. I'm going to show you a document  
21       that was provided. I don't have copies right now.  
22       It is Document 008, SES ICC 008. It is a



1 telemarketing script dated February 13th. And I  
2 apologize for standing here. This is my only copy.

3 A. That's okay.

4 Q. Okay. Just want to give you an  
5 opportunity to review this. 008, 009, and 010.

6 Have you had a chance to look it over?

7 A. I'm working on it.

8 Yes, ma'am.

9 Q. Okay. As I said, it's dated February  
10 13th. I would just note for the record that I  
11 believe counsel supplied a chart saying that that  
12 actual script was in use from May 17th through June  
13 17th.

14 Directing your attention to page 9 --  
15 directing your attention to page 9 of this document  
16 -- actually, let's go back. Let's look at page 8.  
17 First line -- I'm sorry. Have you seen this script?  
18 Do you recall whether you reviewed this or approved  
19 it?

20 A. Well, I've seen so many of them.  
21 Certainly bits and pieces of it look to be like  
22 Santanna scripting.

1           Q.     Okay.  And you agree with me the initial  
2     paragraph asks for the appropriate person to speak  
3     to in the house who's been handling the NICOR gas  
4     bill.  Am I correct?

5           A.     Yes, ma'am.

6           Q.     Second paragraph we assume identifies the  
7     caller saying they're calling for Santanna.  And  
8     they state, Recently you received information from  
9     your gas company regarding a possible savings that  
10    you can receive through the Customer Select Program.  
11    Do you recall receiving that, yes or not?  Great.  
12    That's why I'm calling.

13                Next paragraph says, What this means is by  
14    being a customer of Santanna Energy, you're entitled  
15    to NGR market rate plus 6 cents per therm.  Goes on  
16    to explain potential savings.  Correct?

17           A.     Correct.

18           Q.     All right.  And then the second page of  
19    that, page 9, says, first paragraph, Now my records  
20    are showing the meter location is blank and since  
21    this is for NICOR gas customers only, I need to  
22    verify the account number and meter number from the

1 top right-hand corner of the bill and I'll hold  
2 while you get that. Is that correct?

3 A. Yes, ma'am. That's what it says.

4 Q. And in parentheses it says, Stay quiet and  
5 get account number and meter number when they get  
6 back. Is that correct?

7 A. Yes, ma'am.

8 Q. Okay. Can you tell me anywhere in this  
9 script -- and let me identify it. It says  
10 telemarketing script and not verification script, am  
11 I right, on the front page, the first page, the  
12 title?

13 A. Uh-huh.

14 Q. Can you tell me anywhere in the first  
15 three, four paragraphs, for that matter, where the  
16 telemarketer asks the customer if they're interested  
17 in switching their gas-supply service?

18 A. There's nothing there where they ask that  
19 question specifically.

20 Q. Okay. However, on the fourth paragraph of  
21 the script, the first full paragraph on the second  
22 page, they do request the customer's account number

1           and meter number. Is that correct?

2           A.     That is correct.

3           Q.     Okay. Do you recall changing the scripts  
4           to -- sorry. Let me ask your opinion. Do you view  
5           that as a problem?

6           A.     I think a bunch of this proved itself to  
7           be a problem. So in the subsequent changes, the  
8           scripts were altered to be more educational, to be  
9           more specific in requests for confirmation, you  
10          know, in addressing each and everything that we  
11          could identify something that could be changed or  
12          possibly enhance the quality of the call and the  
13          customer's ultimate reaction to that at the time it  
14          was down the road.

15          Q.     Okay. And would you agree based upon the  
16          exhibits attached to your testimony, that one of the  
17          changes that was made was to not ask for customer  
18          confidential information such as account number and  
19          meter number prior to ascertaining that the customer  
20          was interested in actually switching their gas  
21          supplier?

22          A.     I think -- are you referring to a specific

1       script now?

2           Q.     Sure.  Let's look at 1.03.  That's Exhibit  
3       1.03.

4           A.     Yes, I would agree that that request for  
5       information has been moved to a much later point in  
6       the scripting.

7           Q.     And you would agree that that move to a  
8       much later point is far more appropriate than the  
9       location in which that language was placed in the  
10      original, in the initial script?

11          A.     I think it's working better.

12          Q.     Okay.  Well, working better or --

13          A.     I think it's more informative to the  
14      customer.

15          Q.     You don't know -- let me ask this.

16                 Based on your knowledge and information,  
17      is the script that you have in front of you which  
18      was used from May 17th to June 17th, is the script  
19      that you have in front of you compliant with  
20      Illinois and/or federal telemarketing laws?

21          MR. MARKOFF:  Objection, calls for a legal  
22      conclusion.

1           MS. NORINGTON-REAVES: I'm not asking for a  
2           legal conclusion. I'm asking for based on his  
3           knowledge and information if that script is  
4           compliant.

5           MR. LEINBERGER: But that's still a legal  
6           conclusion.

7           JUDGE ALBERS: I'll recognize that Mr. Gatlin  
8           is not an attorney. To the extent that he has an  
9           opinion on whether or not he thinks his company's  
10          documents are compliant with law, he can offer that  
11          opinion.

12          MS. NORINGTON-REAVES: Q. I'll rephrase the  
13          question. Do you know whether that script is  
14          compliant with Illinois or federal telemarketing  
15          laws?

16          A. At the time that we generated the script,  
17          we thought that the script was compliant with the  
18          regulations. Now, you know, to re-answer that  
19          question now, you know, you'd have to go back and  
20          I'd have to go back and reread in light of some of  
21          the emphasis that's being placed on different points  
22          now and see if my conclusion changed about that.

1           Q.    What is your view now sitting here today  
2   looking at that?

3           A.    Without literally taking the regulations  
4   and laying them down alongside of what this document  
5   says and judging it on a paragraph-by-paragraph,  
6   issue-by-issue basis, I couldn't answer that.

7           Q.    Okay.

8           A.    Certainly not anything that we want to go  
9   back to using.

10          Q.    Okay.  Thank you.

11                I don't know if you're going to need to  
12   see this again.  If you need to, please let me know.

13                But based on your review of the script  
14   that I just had before you, do you think that that  
15   script, the text of that script adequately discloses  
16   to customers in plain language the prices, terms,  
17   and conditions of the products and services being  
18   offered and sold to the customer?

19          A.    At the time we generated that script, we  
20   certainly did.

21          Q.    Do you think so now?

22          A.    Well, we've made changes in the scripts

1       now to further emphasize and clarify as many points  
2       and areas as we can address that needs to be  
3       clarified. We think that the script that we're  
4       utilizing now is clearer than the ones we used  
5       previously.

6           Q.     Well, I'm not asking about the other  
7       members of your organization. I'm specifically  
8       asking you if you sitting here today believe that  
9       that script does all the things that I just, which  
10      I'd be more than happy to read for you again.

11           Do you think that that script adequately  
12      discloses in plain language the prices, terms, and  
13      conditions of service being offered to the customer?

14           MR. MARKOFF: I'd object and ask that the  
15      document be given back to the witness.

16           JUDGE ALBERS: Do you need it back?

17           MS. NORINGTON-REAVES: I've offered it.

18           THE WITNESS: Yeah, please.

19           MS. NORINGTON-REAVES: Q. Just to make sure,  
20      if you could just state for the record, this is the  
21      same document --

22           A.     ICC 008, yes, it is.



1 Well, the main --

2 Q. Before you give any explanation, I'm  
3 trying to get a yes or a no. You can explain after  
4 that. But it's either yes or not that you feel it  
5 meets those requirements or not.

6 A. Yes, I think it does in general other than  
7 the fact that it doesn't address the storage  
8 component of the program.

9 Q. So therefore it does not fully address the  
10 prices, terms, and conditions of the product and the  
11 service that's being offered to the customer?

12 A. At the time it was utilized, it was our  
13 opinion that it did. Now, it doesn't address  
14 storage. It created a confusion factor by not  
15 addressing storage.

16 Q. Okay.

17 A. Whether or not -- you know, we didn't  
18 interpret that that was an issue at that point. Had  
19 we recognized it had been an issue, a term and  
20 condition that would be an issue, then it would have  
21 been addressed in that telemarketing script.

22 Maybe it had something to do with the fact

1       that we'd been dealing with storage for 14, 15 years  
2       already.  It's a part of the tariff.  So storage  
3       wasn't -- it's sort of like breathing.  It was an  
4       involuntary thing to us.  It's always been a part of  
5       the program.

6               Q.     With all due respect, Mr. Gatlin, I didn't  
7       ask for any of that.  I would move that that  
8       response be stricken as unresponsive to the  
9       question.

10              MR. MARKOFF:  I'd object to that motion.  He  
11     was just giving a full and complete answer.

12              JUDGE ALBERS:  You did say he could explain.

13              MS. NORINGTON-REAVES:  All right.  At this  
14     point why don't we stop for lunch and I'll just  
15     resume after.

16                               (Whereupon CUB Cross Exhibit 2 was  
17                               marked for  
18                               identification.)

19              MS. NORINGTON-REAVES:  I would also like to  
20     offer this as Cross Exhibit 2.  I will have copies  
21     made.  I did make a note to do that.  Thank you,  
22     Miss Buell.

1 MS. BUELL: No problem.

2 MS. NORINGTON-REAVES: That's Cross Exhibit 2.

3 JUDGE ALBERS: Was Cross Exhibit 1 ever  
4 offered?

5 MS. NORINGTON-REAVES: Okay. If it was not, I  
6 would like to offer Cross Exhibits 1 and 2 into  
7 evidence.

8 JUDGE ALBERS: Any objection to either of them?

9 MR. MARKOFF: I would not object to Number 2.  
10 I would object to Number 1 as lack of foundation at  
11 least as to the passage referenced by Miss Norington  
12 about somebody named John McKendry. We don't know  
13 who that is and that is certainly hearsay. And it's  
14 come through a string of e-mails, which makes it at  
15 least double hearsay. Certainly, Mr. Gatlin was not  
16 able to lay a foundation about this.

17 MS. NORINGTON-REAVES: Foundation laid was the  
18 concern about customers being asked for meter  
19 numbers and account numbers. I just produced the  
20 scripts which shows that customers were asked about  
21 meter numbers and account numbers before there was a  
22 confirmation that they were actually intending to

1 switch, exactly what is contained here.

2 It wasn't being offered for necessarily  
3 the truth of the matter asserted but to show the  
4 pattern that the meter number and account number was  
5 an issue. He has substantiated it by acknowledging  
6 that that was the case with respect to the script.

7 MR. MARKOFF: That doesn't have anything to do  
8 with the e-mail. I mean, it references that, but --

9 MS. NORINGTON-REAVES: Well, the judge already  
10 overruled the objection with respect to foundation  
11 once.

12 JUDGE ALBERS: I'm going to allow both exhibits  
13 in. I'll give Number 1 the appropriate weight given  
14 the objections raised by Mr. Markoff.

15 (Whereupon CUB Cross Exhibits 1 and 2  
16 were admitted into  
17 evidence.)

18 MS. NORINGTON-REAVES: Thank you, Your Honor.

19 JUDGE ALBERS: And I have twelve o'clock. We  
20 can resume at one o'clock.

21 (Whereupon a lunch recess was taken  
22 until 1:15 p.m.)

## 1 AFTERNOON SESSION

2 (Whereupon the proceedings were  
3 hereinafter  
4 stenographically  
5 reported by Carla  
6 Boehl.)

7 JUDGE ALBERS: Back on the record. We return  
8 from lunch and Ms. Norington-Reaves will resume her  
9 cross examination of Mr. Gatlin.

10 MS. NORINGTON-REAVES: Thank you, Your Honor.

## 11 CROSS EXAMINATION (Continued)

12 BY MS. NORINGTON-REAVES:

13 Q. Mr. Gatlin, I would like to direct your  
14 attention to Exhibit 1.08 attached to your rebuttal  
15 testimony. Could you please identify this document  
16 for the record?

17 A. Exhibit 1.08 is a telemarketing script,  
18 Santanna Energy Services telemarketing script.

19 Q. And do you still have before you I think what  
20 has now been admitted as CUB Cross Exhibit 2 which  
21 was the telemarketing script found at SES ICC 008,  
22 009 and 010?

1 A. Yes, I do.

2 Q. And we established when we talked about that  
3 document, the 008, that I believe it was your  
4 testimony, correct me if I am wrong, that this  
5 document was problematic in that it didn't properly  
6 inform the customers, didn't adequately disclose to  
7 the customers in plain language the prices, terms  
8 and conditions of the products and services being  
9 offered and sold to the customers?

10 MR. MARKOFF: Objection, mischaracterizes his  
11 testimony.

12 MS. NORINGTON-REAVES: Well, his testimony was  
13 that with respect to the storage aspect that this  
14 was correct, if I remember correctly. Am I wrong?

15 THE WITNESS: That's correct, specifically  
16 related to the storage aspect of it. But otherwise  
17 it did.

18 Q. Otherwise, in your opinion you feel that this  
19 adequately discloses the prices, terms and  
20 conditions of the products and services that  
21 Santanna was offering?

22 A. Yes.

1 Q. Okay. Then with respect to that storage  
2 aspect, looking at document -- this Exhibit 1.08, I  
3 will give you an opportunity to read through it.  
4 Let me know when you are ready.

5 (Pause)

6 A. Yes, ma'am, I am finished.

7 Q. Okay. With respect to that storage element  
8 that was missing from the first document, in your  
9 opinion does the inclusion of the storage element in  
10 this second document, Exhibit 1.08, meet the  
11 requirements that I just read to you?

12 A. Well, it obviously was a work in progress.  
13 But, yes, that was what we were trying to do, was  
14 meet those requirements.

15 Q. Okay. Can I ask you in looking at Exhibit  
16 1.08, can you show me where in this script, prior to  
17 the area in which the telemarketer is to ask for the  
18 account and meter numbers or the telephone number  
19 and last four digits of the social security, where  
20 in this script the customer -- there is a  
21 confirmation by the telemarketer that the customer  
22 is actually interested in or intends to switch to

1 Santanna Energy Services as their gas supplier?

2 A. Well, in this particular script apparently  
3 there is a failure to ask that.

4 Q. Well, I am trying to establish -- let me ask my  
5 question. I don't think you are answering the  
6 question, if I may just rephrase here. What I am  
7 asking you is, where in this script, prior to the  
8 fourth paragraph which is on the second page there  
9 at 012, where in this script, prior to the  
10 telemarketer asking for the social security number  
11 and telephone number or the account number and meter  
12 number, where does the telemarketer ask the customer  
13 if they are in fact interested in or asking to  
14 switch to Santanna Energy Services as their  
15 alternative gas supplier?

16 A. I don't see that the telemarketer did ask that  
17 question.

18 Q. Okay. Do you see anywhere in the script where  
19 there is a question that would confirm that prior to  
20 asking for the account number and meter number?

21 A. No, I do not.

22 Q. Okay. Thank you. And just for the record, the



1        dates in which this script was apparently used was  
2        June 17 of this year through July 9 of this year, is  
3        that correct?

4        A.     Unless I have the --

5        Q.     On Exhibit 1.08?

6        A.     Unless I have the spreadsheet that I am looking  
7        at that shows the time intervals, I can't answer  
8        that.

9        Q.     My version has it in here written in the top of  
10       the right-hand corner.

11       A.     It does show on here 6/17 to 7/09, if that's  
12       what that -- yes, ma'am.

13                     It's not proposed that this was the end of  
14       the communication with that customer.

15       Q.     I didn't ask a question, sir. I was asking  
16       about the usage dates.

17                     Okay. Directing your attention to page  
18       1.09 of your exhibit, would you please identify that  
19       for the record?

20       A.     Did you just hand me that?

21       Q.     It's attached to your testimony, sir. It's  
22       Exhibit 1.09 to your testimony, at the end. We just

1 looked through 1.08.

2 A. You are not talking about ICC 009?

3 Q. No, I am talking about Exhibit 1.09.

4 A. I am with you.

5 Q. You got it?

6 A. Yes, I do.

7 Q. Please take a few moments to review this and  
8 also identify it for the record.

9 (Pause)

10 A. I have reviewed it.

11 Q. Can you identify it for the record, please?

12 A. It's Exhibit 1.09.

13 Q. What is the document? What does it contain?

14 A. It's a telemarketing script used by Santanna  
15 Energy Services in the Customer Select Program.

16 Q. And in this script, five paragraphs down, it  
17 says, "Three things to remember," talks about the  
18 percentages of estimated savings, talks about price  
19 fluctuation, and it also mentions a monthly  
20 administrative fee of \$3 for the program, am I  
21 correct?

22 A. Yes, ma'am.

1 Q. Okay. It also has a paragraph regarding  
2 storage underneath that. It also provides -- on the  
3 next page it also discusses a 60-day cancellation  
4 period, am I correct?

5 A. Yes, it does.

6 Q. And there is also the question "Can I sign you  
7 up with Santanna," is that correct?

8 A. Yes, it is.

9 Q. Then a few paragraphs below that it asks for  
10 the customer's account number and meter number, is  
11 that also correct?

12 A. Yes, it does.

13 Q. Now, based on what you have before you in this  
14 document, would you say that your Exhibit 1.09  
15 adequately discloses in plain language the prices,  
16 terms and conditions of the products and services  
17 being offered and sold to the customer?

18 A. I think this is a better presentation because  
19 it was modified. But at the time we generated the  
20 original document, we thought it did.

21 Q. I am asking you if this document does what I  
22 just asked, if it adequately discloses in plain

1 language the prices, terms and conditions of the  
2 products and services being offered, this particular  
3 one, Exhibit 09.

4 A. You just referenced 09.

5 Q. 1.09, this Exhibit 1.09.

6 A. Yes, I think it does.

7 Q. I have some questions about the training  
8 process for the sales force. Do you know what type  
9 of training the sales force undergoes, the  
10 telemarketers and door-to-door?

11 A. Internal training that they have with their  
12 staff members, is that the question?

13 Q. I am just asking about training. What do you  
14 know about the training that the sales people  
15 undergo?

16 A. You are asking me if I know what training the  
17 employees of the telemarketer undergo?

18 Q. Well, they are Santanna representatives. So I  
19 am asking you, what training do the sales force  
20 members undergo?

21 A. I don't know.

22 Q. Do you know if anyone from Santanna

1 participated in the training?

2 A. That's not my knowledge that anyone with  
3 Santanna did participate in the training, other than  
4 the preparation of the scripts to be used by the  
5 telemarketers.

6 Q. Did you have any oversight for insuring that  
7 the training -- strike that. Who had oversight for  
8 the training program?

9 A. The telemarketing company has oversight  
10 responsibilities for the training of its employees.

11 Q. And those employees have essentially been hired  
12 by Santanna to represent Santanna in the field, am I  
13 correct?

14 MR. MARKOFF: Objection.

15 THE WITNESS: Telemarketing is not in the  
16 field.

17 JUDGE ALBERS: Wait a minute. What was the --

18 MR. MARKOFF: Foundation as far as hiring by  
19 Santanna.

20 JUDGE ALBERS: Say that again.

21 MR. MARKOFF: Lack of foundation as far as  
22 hired by Santanna.

1 MS. NORINGTON-REAVES: I didn't make an  
2 assumption; I asked a question. He can tell me  
3 whether that is true or not. I didn't make any  
4 assumptions.

5 JUDGE ALBERS: Overruled.

6 THE WITNESS: Repeat the question, please.

7 MS. NORINGTON-REAVES: Can you read it back?

8 (Whereupon the requested portion was  
9 then read back by the  
10 Reporter.)

11 A. No, those people are not hired by Santanna.  
12 They are on a contract basis.

13 Q. So Santanna hires the marking company to retain  
14 individuals to represent Santanna in the field, is  
15 that correct?

16 A. It depends on what the definition of "hired"  
17 is. We enter into a contract with the telemarketing  
18 contract to perform services for us. And if they  
19 perform those services, we will pay them for it.  
20 And if that's a definition of hiring, then yes. If  
21 it isn't, then --

22 Q. And your expectation is that the telemarketing

1        company will secure individuals who will go out and  
2        market on behalf of Santanna, am I correct?

3        A.     The telemarketing company's representatives  
4        would use telephonic communications to market on  
5        behalf of Santanna.

6        Q.     And the door-to-door companies would retain  
7        people who would go physically out and market on  
8        behalf of Santanna, right?

9        A.     Correct.

10       Q.     With that being said, who, if anyone, from  
11       Santanna had responsibility for quality assurance,  
12       if you will, with respect to the marketing program,  
13       whether telephonic or door-to-door?

14       A.     Well, I mean, the buck stops here. So I have  
15       the ultimate responsibility for that. To better  
16       answer your question about oversight and  
17       understanding, before we ever started the first  
18       telemarketing program, we went to a telemarketing  
19       call center and went in and spent several hours with  
20       the manager of that call center going through and  
21       looking at the training rooms and understanding the  
22       way they brought people in, hired them, put them

1 through the training rooms, showed them how to  
2 perform their job, scripting, how the teleprompters  
3 work, how to enter the data.

4 Obviously, when you give a script to a new  
5 marketing representative, in order to get on the  
6 phone, even though you are reading it off of a  
7 teleprompter, you need to at least spend some time  
8 familiarizing yourself with that scripting so that  
9 when it comes across the teleprompter, you can read  
10 it in a more comfortable, conversational manner. So  
11 it is not that we have not made an effort to go out  
12 and understand the training procedures.

13 Q. I did not ask you that. I did not ask you  
14 that. I asked you what, if anything -- I asked you  
15 what type of training the sales force underwent, and  
16 we went around and around and around about what the  
17 sales force was and then you said you didn't know.

18 MR. MARKOFF: Objection to the characterization  
19 of the exchange.

20 JUDGE ALBERS: The transcript will reflect what  
21 it was, so we will rely on the transcript.

22 MS. NORINGTON-REAVES: Thank you, Your Honor.



1 Q. Can you tell me who, if anyone, from Santanna  
2 participated in any training procedures for the  
3 marketing door-to-door sales force?

4 A. Preparation and furnishing them the transcripts  
5 and the verification procedures and the contracts  
6 and handouts, to the extent that any of that is  
7 participation in the training, then I did, Greg did,  
8 Doug did. I would assume that you would identify  
9 anyone who performed a review of the scripts,  
10 comments on the scripts, grammatical corrections on  
11 the scripts, just having participated at some level.

12 Q. Also attached to your testimony at, I believe  
13 it's Exhibit Number 1.17 and it's the third page of  
14 that exhibit which is identified as page 14.

15 A. Can I have 1.17? What was your follow-up  
16 question?

17 Q. Yes. It is Exhibit 1.17. I believe it is the  
18 third page. It is identified as paragraph 14 in the  
19 bottom center.

20 A. I have it.

21 Q. You state here -- I am sorry, this is a  
22 response. Let me just identify it. This is a

1 response to Staff's data request and it's data  
2 request JH 1.10 with Subsections A through H. And  
3 did you participate in furnishing this response?

4 A. Yes, ma'am.

5 Q. Okay. It states here on the second page,  
6 responsibility for quality assurance is shared by  
7 Santanna and the telemarketing companies. You state  
8 here that Santanna -- for quality assurance,  
9 Santanna is in regular contact with the  
10 telemarketers for quality assurance purposes. Can  
11 you describe for me what you mean by regular  
12 contact? What does that consist of?

13 A. Sometimes multiple times per day. Sometimes  
14 once a day. There may have been days when there  
15 wasn't contact. But Mr. Cueller had regular contact  
16 with all of the marketing representatives.

17 Q. When you say --

18 A. Not the individual representative but with the  
19 companies.

20 Q. No, I understand. So your contact person at  
21 the company, is that what you are saying?

22 A. Right.

1 Q. So when you say regular contact and you just  
2 said multiple times a day, once a day, you basically  
3 mean telephonic contact or is there another type of  
4 contact that you mean?

5 A. I think there was probably numerous e-mails  
6 that was furnished to you and some data requests  
7 that probably demonstrated some various e-mail  
8 correspondence that went back and forth, and also  
9 some telephonic communication.

10 Q. Have you traveled to the locations of the  
11 telemarketing companies and met with people there on  
12 any type of regular basis, talk to the sales force?

13 A. Not on any basis that I am aware of.

14 Q. It also states here that Santanna randomly  
15 listens to telemarketing calls. When you say  
16 randomly listens, can you tell me how frequently  
17 random is?

18 A. No, ma'am, I cannot tell you what that  
19 frequency is.

20 Q. Are there any records kept of the times during  
21 which Santanna listens in on the verification calls?

22 A. I don't know the answer to that.

1 Q. All right. When you say you don't know the  
2 answer to that, do you mean with respect to the  
3 telemarketing company or with respect to Santanna?  
4 Does Santanna maintain any records of it listening  
5 in on the telemarketing calls?

6 A. I am not aware that a record is kept or is not  
7 kept.

8 Q. It also says Santanna receives recorded  
9 verifications and confirms use of provided scripts.  
10 How do you confirm the use of provided scripts?

11 A. By listening to tape recordings or transcribing  
12 tape recordings.

13 Q. Okay. You stated earlier that you have  
14 agreements with the marketing companies and I recall  
15 seeing somewhere in your testimony, which I cannot  
16 cite to you right at this moment, that -- it may not  
17 be your testimony. I apologize. Do you recall the  
18 manner in which the marketing companies are  
19 compensated for the work they do for Santanna?

20 A. The methodology?

21 Q. No, the manner.

22 A. The manner is by check.

1 Q. Okay. And to the best of your knowledge they  
2 are paid only for those accounts that remain  
3 customers for 60 days, is that correct?

4 A. Yes, the methodology is performance based. And  
5 part of the quality control of that issue is that  
6 the customer has to remain as a customer of Santanna  
7 Natural Gas for 60 days after the sale is made.

8 Q. Okay. Do you wait 60 days before paying the  
9 marketing company?

10 A. Do we wait the 60? No, we do not.

11 Q. Okay. So I am just trying to understand how  
12 this works. So you cut them a check for sales. Do  
13 they produce sales to you, a list of sales that have  
14 been made or customers who have authorized a switch  
15 or authorized Santanna to be the supplier?

16 A. Yes, they submit a data file to us on a --  
17 generally on a daily basis. And then all of the  
18 submittals to the utility company and the monitoring  
19 of accepted accounts -- some accounts are for  
20 whatever reason not accepted into the enrollment  
21 process. They don't -- the meter numbers don't have  
22 the right number of digits or whatever. So Santanna

1 processes all of that information, maintains it,  
2 monitors it, nets out the payment of the check  
3 amount to the telemarketer.

4 Q. So you would pay them based upon the list. And  
5 then if any of those customers cancelled within 60  
6 days, what would you do about the fact that the  
7 company has already been paid?

8 A. We would net that payment amount out against  
9 whatever the future check is that's about to be paid  
10 to them. Should there be no future amount of moneys  
11 owed to that telemarketer, then we would invoice the  
12 telemarketer for that.

13 Q. Do you know how any of the marketing companies  
14 pay the sales people?

15 A. I do not.

16 Q. We just had a discussion about quality  
17 assurance and oversight. I want to just follow up  
18 on that.

19 (Whereupon there was  
20 then had an  
21 off-the-record  
22 discussion.)

1 JUDGE ALBERS: Back on the record.

2 Q. I will give you an opportunity to review that.

3 (Pause)

4 A. I have reviewed it.

5 Q. I am sorry, I didn't hear you.

6 A. I have reviewed the document.

7 Q. What I have handed you is again a chain of  
8 e-mails. Directing your attention to the paragraph  
9 second up from the bottom, it starts with "Your  
10 people need to be..." The second sentence there  
11 says, "Below we offer some script suggestions." The  
12 last sentence says, "If you need to modify the  
13 script suggestions, we would like to see the  
14 condensed version," is that correct?

15 A. I never did get with you. I am sorry. Where  
16 did you start at?

17 Q. The second paragraph up from the bottom  
18 starting with "Your people need to be prepared..."  
19 Do you see that?

20 A. Yes, I am with you.

21 Q. The second sentence in that paragraph beginning  
22 with the word "below," "below we offer some script

1 suggestions." Do you see that?

2 A. Yes, ma'am.

3 Q. And the last sentence, "If you need to modify  
4 the script suggestions, we would like to see the  
5 condensed version." Do you see that?

6 A. Yes, ma'am.

7 Q. Now, this is dated July 9. Would you agree  
8 with me that this e-mail suggests that the companies  
9 are free to make changes to the scripts that are  
10 forwarded by Santanna?

11 A. That strictly refers to the script if they  
12 encountered needing to speak with someone about the  
13 bad press that we had encountered. It did not refer  
14 to the sales script or the verification scripts at  
15 all.

16 Q. Well, I beg your pardon. Did you prepare this  
17 e-mail?

18 A. No, Doug Cueller did.

19 Q. Are you in receipt of this e-mail? Do you  
20 recall having received it?

21 A. I have seen this. Now, whether it was at that  
22 time or whether it's been through review of



1 documents thereafter, yes, I have.

2 Q. All right. But you have seen it. And it says,  
3 "If you need to modify the script suggestions, we  
4 would like to see the condensed version." Is it  
5 Santanna's practice to look at condensed versions of  
6 scripts after changes have been made?

7 A. No, it is not. This does not refer to a sales  
8 script or a verification script. This refers to the  
9 bad press and a suggested script if they encounter  
10 bad press issues that they have to talk about.

11 Q. Okay. Thank you. With respect to the  
12 door-to-door sales force, are you familiar with the  
13 term "FOS"?

14 A. Yes, ma'am.

15 Q. And can you tell us what it stands for?

16 A. Feet on the street.

17 Q. And who made the decision to use the  
18 door-to-door marketing campaign or the feet on the  
19 street people, as you would call them?

20 A. It was a mutual decision. It was discussed  
21 between Mr. Cueller, myself, Mr. Rabaey.

22 Q. And do you recall who created the scripts for

1 the door-to-door use?

2 A. No, there was no one person. There were  
3 scripts already in use with the telemarketing  
4 efforts. And for all practical purposes, the  
5 scripts that the door-to-door people would have been  
6 given to use would have been either identical to or  
7 very similar to, more than likely identical to, the  
8 scripts that were being used by the telemarketers.

9 Q. Okay. Now, prior to initiating your  
10 door-to-door sales campaign, did Santanna engage in  
11 any research into Illinois laws regarding  
12 door-to-door sales?

13 A. Yes, ma'am.

14 Q. So just a point of clarification, prior to  
15 engaging in the door-to-door campaign, Santanna  
16 conducted research into Illinois door-to-door sales  
17 requirements. Okay. At some point is it true that  
18 Santanna began receiving complaints about the feet  
19 on the street representatives, the sales force?

20 A. I think they were among the marketing companies  
21 that we received complaints about.

22 Q. And, in fact, some of the complaints alleged

1       that the feet on the street were posing as NICOR  
2       representatives in order to sign up customers?

3       A.     I have heard that complaint, yes, ma'am.

4       Q.     And I believe in your testimony at page 15 you  
5       -- at page 15 you state, "No, I can say that the  
6       alleged instances of a sales representative posing  
7       as a NICOR employee to my knowledge was limited to a  
8       single person." Is it your testimony today that  
9       there was only one person in the FOS group that was  
10      posing as a NICOR representative?

11      A.     To the best of my knowledge.

12      Q.     Do you know when Santanna first became aware of  
13      this?

14      A.     No, ma'am, I don't know when that was.

15      Q.     And let me ask you, you say that there is only  
16      one person you were aware of. Without saying the  
17      name, would the initials be either K or CF for the  
18      person that you are thinking of?

19      A.     I don't even know...

20      Q.     Do you know the name?

21      A.     ..The person's name.

22             MS. NORINGTON-REAVES: Okay. I would like to

1 show you several documents. For everyone here, 257  
2 and 258 are being offered as CUB Cross 3. 172 is  
3 being offered as CUB Cross 4. 265, CUB Cross 5.

4 (Whereupon there was  
5 then had an  
6 off-the-record  
7 discussion.)

8 (Whereupon CUB Cross  
9 Exhibits 3, 4, 5, 6 and  
10 7 were marked for  
11 purposes of  
12 identification as of  
13 this date.)

14 JUDGE ALBERS: Back on the record.

15 MS. NORINGTON-REAVES: CUB Cross 6 is 201 and  
16 actually I believe this document may be contained  
17 within an exhibit to Mr. Gatlin's testimony.

18 Q. All right. SES ICC 257 and 258 is a document  
19 that was produced by Santanna. Are you familiar  
20 with it?

21 A. Am I in the exhibits to my testimony?

22 Q. No. I am in the exhibits that I have just

1 handed out to you. The big one, the one with the  
2 big paper clip, is 257 and 258, and this was a chart  
3 produced by Santanna, apparently generated by CCI.  
4 And I just would like for you to take a look through  
5 this. Let me know when you are ready, Mr. Gatlin.

6 (Pause)

7 A. I have reviewed the document.

8 Q. Okay. Directing your attention to the very  
9 last entry on the first page, the date in the far  
10 left corner says June 6, 2002, the customer initials  
11 are TSR. In the large section entitled Complaint to  
12 Santanna, it says, "Rep said from NICOR." Do you  
13 see that?

14 A. Yes, I do.

15 Q. It identifies the name of the representative.  
16 And under the section entitled Research Results, it  
17 says, "Was asked for a copy of bill but didn't have  
18 one so told rep to sign a document." So the rep  
19 told him to sign a document, never mentioned  
20 anything about Santanna. Now, assuming that the  
21 representative identified here with the initials CB  
22 is a male, that would be yet an additional FOS that

1 is alleged to have posed as a NICOR representative,  
2 is that correct?

3 A. According to this complaint, yes, ma'am.

4 Q. Okay. And looking in the chart at -- I am  
5 sorry. Not looking at the chart, now moving to  
6 document 172, SES ICC 172, in the lower right-hand  
7 corner?

8 A. Yes, ma'am.

9 Q. This is an e-mail from Doug Cueller and it  
10 states -- it is from Doug Cueller to someone, e-mail  
11 address richems@aol.com. Do you know who that  
12 person might be?

13 A. Which person?

14 Q. The person that the e-mail is being sent to.  
15 It says Rich M.

16 A. Yes, it's a gentleman with EMS Marketing  
17 Company. His name is Rich.

18 Q. And this is being forwarded to him from Doug  
19 and it says, "Allegedly, you have a young black man  
20 in St. Charles that went to the home of" -- the  
21 customer's name has been redacted -- "stating that  
22 he has been from NICOR Gas today. Please make

1       certain that none of your reps misrepresent  
2       themselves in this manner." So assuming that this  
3       person is not the one identified on this docket,  
4       that would be three posing as NICOR reps allegedly,  
5       is that correct?

6       A.    You have identified two, correct?

7       Q.    Well, I said assuming -- you have already  
8       identified one in your testimony in addition?

9       A.    Yes.

10      Q.    So we are agreed?

11      A.    Yes.

12      Q.    Directing your attention to page 265, SES ICC  
13      265. Without saying the last name of the person on  
14      here, could you also reference the chart that is  
15      identified as document 257? I think you will find  
16      that person's name on this document.

17      A.    Yes, I did.

18      Q.    If you look in the complaint section here,  
19      several lines down you will see, "At no time did  
20      this person advise me that he was from another  
21      carrier but did mention he was from NICOR." Do you  
22      see that? It's about midway down.

1           A.     Yeah, I am reading it.

2                               (Pause)

3                       Yes, ma'am, I have read it.

4           Q.     Okay. And we know from this chart, given that  
5           there is a representative code to the right of the  
6           section you just read, that this is not an  
7           individual that we have just mentioned, not one of  
8           the three individuals that we have identified  
9           already. So that would bring us to four that were  
10          allegedly engaging in this practice, is that  
11          correct?

12          A.     That's correct.

13          Q.     Looking at SES ICC 201, I will give you a  
14          chance to go through it. As a matter of fact, I  
15          believe you have this and perhaps ICC 200 attached  
16          to your testimony as exhibits. As a matter of fact,  
17          it's contained in your Exhibit 1.15. If you could  
18          look at all four of those pages actually, beginning  
19          at your exhibit to your testimony, SES ICC 198, 199,  
20          200 and 201 which are identified as Exhibit 1.15.

21          A.     Yes, ma'am.

22          Q.     And contained here, if we just reference your



1 exhibit, looking at document 200, it says, "Customer  
2 indicated that two FOS people came to their home  
3 intoxicated, indicated to the customer that they  
4 were part of NICOR Gas." On the following page  
5 those two individuals are apparently identified, and  
6 there are two. So that would now bring us two  
7 additional FOS persons posing as NICOR  
8 representatives allegedly, is that correct?

9 A. What was the number you just said?

10 Q. I beg your pardon?

11 A. What number did you say?

12 Q. I said that would give us two additional?

13 A. Yes, it would.

14 Q. Okay. Now, in response to CUB DR 1.6, Santanna  
15 identified these two gentlemen as employees of EMS,  
16 one of the marketing companies that you have  
17 mentioned. And this chart pertains solely to CCI.  
18 So based upon the documents that you have just  
19 reviewed, representatives from two of the  
20 door-to-door companies, at least two of the  
21 door-to-door companies, are alleged to have posed as  
22 NICOR representatives while marketing to perspective

1 Santanna customers, isn't that correct?

2 A. There were two that were allegedly doing that,  
3 yes.

4 Q. I am saying there is two different companies.  
5 There are representatives from two different  
6 companies that are alleged to have posed as NICOR  
7 representatives while marketing to perspective  
8 Santanna customers, isn't that correct?

9 A. I am sorry, who did you state earlier that this  
10 chart had come from?

11 Q. CCI, I believe it says that on here.

12 A. Yes, it would.

13 (Whereupon CUB Cross  
14 Exhibit 8 was marked for  
15 purposes of  
16 identification as of  
17 this date.)

18 Q. CUB Cross 8, is that where we are, I believe?  
19 Did you have an opportunity to review that, this  
20 document 274?

21 A. What did you identify this as? CUB Cross --

22 Q. 8. The document has 274 down in the lower

1 right-hand corner, the SES number assigned to it.

2 A. Yes, I have looked at the document.

3 Q. Okay. And can you identify the document?

4 A. It's an e-mail from Doug Cueller in the  
5 Santanna Hinsdale office to Eric Hudson with  
6 Consumer Choice, Inc., a telemarketing -- a  
7 door-to-door organization.

8 Q. They are also known as CCI, correct?

9 A. CCI, correct.

10 Q. And it appears to be a forward and the  
11 forwarded message is detailed below, and it  
12 essentially involves a customer who stated she  
13 received an automated message from the Village of  
14 Roselle Police Department to be aware of Santanna's  
15 solicitors. Is that an accurate description of  
16 what's contained here?

17 A. Were you waiting on an answer from me?

18 Q. Yes.

19 A. Yes, it does say that.

20 Q. Okay. Were you aware of this?

21 A. Yes, I was.

22 Q. And did you or anyone else on Santanna's behalf

1 contact the police department in Roselle?

2 A. I didn't personally contact the Roselle Police  
3 Department, and I can't tell you whether or not Doug  
4 did or not.

5 Q. So do you know whether Santanna investigated  
6 this or not?

7 A. Investigated the incident?

8 Q. Investigated the incident, yes.

9 A. It's my understanding that Santanna initiated  
10 some action into investigating each incident that we  
11 had a report of a complaint of this nature with,  
12 with the organization that it was reported to have  
13 occurred through, if we had that kind of  
14 identification.

15 Q. Well, what kind of actions would you have taken  
16 with respect to the company where an incident is  
17 alleged like this, as you were just saying?

18 MR. MARKOFF: Objection. What is the --

19 MS. NORINGTON-REAVES: He just said that they  
20 would take action in the event of an incident like  
21 this, and I am asking what action would he take for  
22 this kind of incident. He said Santanna takes an

1       action. I am trying to understand what kind of  
2       action he is talking about.

3               MR. MARKOFF: Can I finish my objection?

4               JUDGE ALBERS: I would hear it.

5               MR. MARKOFF: I don't know what the incident  
6       is.

7               MS. NORINGTON-REAVES: He stated the incident  
8       was the incident contained in the e-mail.

9               MR. MARKOFF: CUB Exhibit 8?

10              MS. NORINGTON-REAVES: Yes, CUB Exhibit 8.

11              MR. MARKOFF: It says that there is going to be  
12       a gathering. I am just a little lost on what the  
13       incident is.

14              MS. NORINGTON-REAVES: It doesn't say there is  
15       going to be a gathering, Mr. Markoff.

16              JUDGE ALBERS: Well, do you have the right  
17       piece of paper?

18              MR. MARKOFF: No, I am sorry, not a gathering  
19       but a warning. It says be aware of Santanna  
20       solicitors but it doesn't talk about anything at  
21       least along the lines of the question as you have  
22       been doing.

1 MS. NORINGTON-REAVES: The witness has referred  
2 to an incident. I think the witness is clear about  
3 the question. I am not --

4 JUDGE ALBERS: If the witness is not  
5 understanding something counsel is asking, then  
6 certainly he should point that out. But from what I  
7 heard so far, I think the witness and counsel are on  
8 the same page here.

9 MR. MARKOFF: Well, I am just trying to keep up  
10 and figure out what it is so that I know how -- what  
11 it is she is asking.

12 JUDGE ALBERS: If there is something you want  
13 to bring up on redirect, you are welcome to.

14 THE WITNESS: I thought my comment was that if  
15 we could identify the details of an incident, that  
16 we would address that incident back through the  
17 telemarketing company or feet on the street people  
18 that were involved in the incident. Is that not  
19 what I said?

20 MS. NORINGTON-REAVES: To be honest with you,  
21 at this point I am not certain if that's what you  
22 said. We would have to go back and reread it, and

1 at this point I am willing to move forward.

2 (Whereupon CUB Cross  
3 Exhibit 9 was marked for  
4 purposes of  
5 identification as of  
6 this date.)

7 Q. CUB Cross 9.

8 (Pause)

9 A. I have read it.

10 Q. This is an e-mail from Lori Brosky to Doug  
11 Cueller. And Lori Brosky is a Santanna employee, is  
12 she not?

13 A. Yes, she is.

14 Q. And it says, This issue may now be at the  
15 attention stage," correct?

16 A. Yes, it did.

17 Q. It goes on to say, "We have indicated for a  
18 month now that the FOS are representing themselves  
19 as NICOR employees and tell the customer that if  
20 the" -- I am assuming that should be "they" -- "hand  
21 over their NICOR invoice, they will save money."  
22 This says, "This is now reaching the attention

1 stage." It also says, "It's been going on for a  
2 month." Can you look at SES ICC 172 which is the  
3 document I handed you before? It's the one that  
4 says, "Allegedly, you have a young black man in St.  
5 Charles..."

6 A. Do I link this to that?

7 Q. No, I am asking you to look at that. Could you  
8 look at it? I apologize if I wasn't clear.

9 A. What was the number again?

10 Q. It's SES ICC 172 in the lower right-hand  
11 corner.

12 A. I have it.

13 Q. Can you tell me the date on that document?

14 A. On 172?

15 Q. Yes, sir.

16 A. The e-mail date is what you are asking?

17 Q. Uh-huh.

18 A. May 31.

19 Q. And what's the date on the document 206?

20 A. June 27.

21 Q. And this document on June 27 says, "This issue  
22 may now be at the attention stage." Do you have any



1       idea why this issue wasn't at the attention stage on  
2       May 31?

3       A.     Well, I think it was at the attention stage on  
4       May 31 because there was action being taken back at  
5       the telemarketing organization, attempting to  
6       inquire into reporting these complaints and  
7       incidents, and asking for some investigation to be  
8       done on their end to see if we could identify that  
9       it was happening, and if it was happening, to weed  
10      those people out and get that type occurrence out of  
11      the program.

12      Q.     Do you have any idea how many complaints  
13      Santanna has received regarding individuals posing  
14      at NICOR representatives?

15      A.     No, I do not.

16      Q.     Do you know what was done, what was  
17      specifically done, in response to the complaints  
18      that Santanna did receive regarding people allegedly  
19      posing as NICOR employees?

20      A.     I know that action was taken to pursue those  
21      complaints back through the marketing firm, if we  
22      could identify which marketing firm was reportedly

1 involved in that. That action was -- or our  
2 investigative efforts were made back through them to  
3 identify the circumstances, investigate it. And if  
4 we could verify that that sort of thing was going  
5 on, I think we demonstrated in several different  
6 places that we didn't have any tolerance for people  
7 staying in the program if they were operating  
8 outside the guidelines of the program. There is no  
9 reason why Santanna would want to be a party to  
10 generating complaints for itself to deal with or  
11 aggravating customers.

12 Q. Okay. Well, let me direct your attention to  
13 document 165 which I believe was our first cross  
14 exhibit. I am sorry, it was 166, I apologize.  
15 Actually, I am mistaken. What I want is 165. This  
16 would be CUB Cross 10.

17 (Whereupon CUB Cross  
18 Exhibit 10 was marked  
19 for purposes of  
20 identification as of  
21 this date.)

22 Directing your attention to the first entry

1 on this page, Mr. Gatlin, an e-mail from Doug  
2 Cueller to Eric Hudson, the individual you  
3 identified earlier as an employee of CCI.

4 A. Yes, ma'am, I am with you.

5 Q. It says, "This is the second complaint, both in  
6 CCI exclusive towns. Please make sure that this is  
7 the last or we will have to consider terminating our  
8 business relationship." Can you tell me what the  
9 date is on this document?

10 A. May 23.

11 Q. But Santanna didn't terminate its business  
12 relationship after that, did it?

13 A. No, we did not.

14 Q. In fact, Santanna maintained a business  
15 relationship with CCI until approximately July 31,  
16 isn't that correct?

17 A. That's correct.

18 Q. Now, in addition to the allegations that  
19 Santanna marketers were posing as NICOR  
20 representatives, based upon the complaints that  
21 Santanna has received, isn't it true that the FOS,  
22 the feet on the street door-to-door folks, were also

1 taking customers' gas bills?

2 A. They were asking for copies of their gas bills.

3 Q. And they were taking the gas bills with them  
4 when they left, weren't they?

5 A. In some cases, I think that they were, copies  
6 of them or the gas bill itself.

7 Q. All right. Let's look at this chart again, 257  
8 through 258. Look at the entry about midway  
9 through. Actually, it's above the last entry that I  
10 had you read. It's dated 6/6, the customer's  
11 initials are SP.

12 A. Where, page 1?

13 Q. In Elmhurst?

14 A. SP?

15 Q. Yes, "S" as in "Sam" in the city of Elmhurst.  
16 Do you see that one?

17 A. Yes, ma'am.

18 Q. Going across that line, all the way to the end  
19 it says, "Rep told her that she needed to sign in  
20 order to receive an estimate of Santanna's rates.  
21 Also took copy of gas bill." Do you see that?

22 A. Yes, I do.

1 Q. Let me also direct your attention to documents  
2 provided by Santanna. 191 would be 12, everyone.

3 (Whereupon CUB Cross  
4 Exhibits 11 and 12 were  
5 marked for purposes of  
6 identification as of  
7 this date.)

8 Mr. Gatlin, let me know when you are ready.

9 (Pause)

10 A. I am ready.

11 Q. Okay. CUB Cross 11, which I believe is  
12 identified at the bottom as SEC ICC 190, is an  
13 e-mail. CUB Cross 12 is -- well, it appears to be  
14 the identical e-mail, just addressed to another  
15 person. Would that be a correct assessment?

16 A. Yes, ma'am.

17 Q. And the message says, "Customers are telling us  
18 that the reps are stating that SES will mail back  
19 the NICOR bill in a couple of weeks after they leave  
20 with it. We have no process or intentions of  
21 mailing back the bill. Please make sure that they  
22 stop making promises that we can't keep. Thanks."

1 Do you know when Santanna first became aware that  
2 the FOS were allegedly leaving homes with copies of  
3 the customers' gas bills?

4 A. No, I don't know that I have any awareness of a  
5 date that that began. It would be my interpretation  
6 that they could ask for a copy of or an original of  
7 the gas bill to attach to the contract, that that  
8 would more than likely be something that they would  
9 be doing on a routine basis from the beginning. But  
10 I don't know that.

11 Q. And the messages that you have just read, they  
12 don't say, "Please stop taking customers' bills," is  
13 that correct?

14 A. No, it advises them to -- that if they ask for  
15 the customer's bill, that they can't ask for it  
16 under some pretense that they are going to mail it  
17 back. It is not going to be mailed back.

18 Q. I am sorry, does it say that if you ask for the  
19 customers' bills? I don't see that in here.

20 A. I am sorry, was I answering a question that  
21 inferred that they were physically taking the bill  
22 from the customers?

1 Q. My question to you was, does the message say,  
2 "Please stop taking customers' bills," "Please don't  
3 leave with customers' bills"? Does it say that at  
4 all?

5 A. It says quit making them promises that we can't  
6 keep. So I interpret it to say that don't ask them  
7 for a copy of the bill or the original of a bill and  
8 tell them that we will mail it back to them, because  
9 we don't have anything set up to mail the bills  
10 back.

11 Q. Right, so that pertains to mailing it back. My  
12 question is, does the message say don't take the  
13 bill at all?

14 A. No, it does not.

15 Q. Thank you. And you are aware, aren't you, that  
16 a customer's gas bill contains their name, their  
17 address, their account number, and their meter  
18 number, isn't that correct?

19 A. Yes, ma'am.

20 Q. And you are similarly aware that that  
21 information is precisely the information that one  
22 would need in order to switch a customer to Santanna

1 as a gas supplier, isn't that correct?

2 A. That's correct.

3 Q. Going back to this chart, in addition to  
4 allegedly posing as NICOR representatives and  
5 allegedly taking customers' bills, Santanna also has  
6 received complaints that the feet on the street were  
7 asking customers to sign a survey?

8 A. I have heard that.

9 Q. And according to the chart -- let's just walk  
10 through this -- the first entry, FA, looking at the  
11 complaint section, "Signed survey to make sure that  
12 NG is servicing his account correctly and at the  
13 current rate."

14 The next entry, "Customer called and said  
15 that her and her son were tricked to sign up with  
16 SES. They went down the block telling them to sign  
17 a survey to save on gas prices."

18 Two entries down, "Survey form, again."

19 Next section, "Signed survey to get NG  
20 rebate."

21 Next section, "Rep said signing survey."

22 Next section, "Sales rep told customer and



1 neighbors if they wanted to get a quote on SES price  
2 for the house, they would need to sign a paper."

3 Next page, "Sign survey and receive a 13  
4 percent savings, guaranteed."

5 "Sign paper."

6 "Sign survey."

7 MR. MARKOFF: Move to strike testimony of  
8 counsel. There is no question.

9 JUDGE ALBERS: I thought you had asked him  
10 earlier if that was what was on the document.

11 MS. NORINGTON-REAVES: Thank you, Your Honor.  
12 That was precisely what I was doing.

13 MR. MARKOFF: I didn't hear that. It's all the  
14 same; I assume that's what she wants to do, but it's  
15 not what I thought she was asking.

16 JUDGE ALBERS: Can you repeat then for the  
17 benefit of Mr. Markoff your intentions in citing all  
18 that?

19 Q. Is it correct that the statements that I just  
20 read are actually contained within this chart  
21 contained as SES 257 and 258 which was produced by  
22 Santanna?

1           A.     Yes, they are.

2           MS. NORINGTON-REAVES:   Thank you.

3                     I believe that would be 13 and 14.

4           JUDGE ALBERS:   Part of the same e-mail chain?

5           MS. NORINGTON-REAVES:   Yeah, I think one just  
6 concludes the other.   We can just call it 13, if you  
7 would like and make it a two-page exhibit.

8           JUDGE ALBERS:   Yeah, that might be --

9           MS. NORINGTON-REAVES:   Okay.   We will call that  
10 13 then.

11                     (Whereupon CUB Cross  
12 Exhibit 13 was marked  
13 for purposes of  
14 identification as of  
15 this date.)

16          Q.     Did you have a chance to look that over yet,  
17 Mr. Gatlin?

18          A.     Yes, ma'am.

19          Q.     Page 182 through 183, actually just let me  
20 direct you to a statement you make in your  
21 testimony.   Page 13 of your testimony, please, lines  
22 291 through 294.

1 A. You talking about my exhibits?

2 Q. I am sorry, your actual rebuttal testimony.

3 A. What page again?

4 Q. Page 13, lines 291 through 293, yeah, 293.

5 A. Under the question, "Why then..."

6 Q. Yes. The question says, "Why then do you think  
7 there have been so many complaints?" And your  
8 answer was, "I am not sure is the customers just  
9 forgot that they had chosen Santanna or just wanted  
10 to find a way out of their agreement by fabricating  
11 slamming complaints. But it is simply untrue that  
12 Santanna engages in the practice of slamming." Is  
13 it your belief that customers are fabricating  
14 complaints that they have been switched without  
15 authorization?

16 A. I didn't isolate fabrication as the only  
17 alternative here. I stated that they are either  
18 just mis-remembering or fabricating.

19 MS. NORINGTON-REAVES: Objection, Your Honor.  
20 My question was a very direct one and the witness'  
21 response is non-responsive. My direct question --  
22 sorry, go ahead.

1 JUDGE ALBERS: I am going to direct the witness  
2 to answer the question you asked.

3 MS. NORINGTON-REAVES: Thank you.

4 MR. MARKOFF: Could I have the question read  
5 back, please?

6 JUDGE ALBERS: It may be quicker to just  
7 restate it.

8 MS. NORINGTON-REAVES: I beg your pardon?

9 JUDGE ALBERS: It may be quicker for you just  
10 to repeat it.

11 Q. I believe my question was, is it your belief  
12 then -- I don't believe I used the word "belief." I  
13 don't recall. But is it your opinion then that  
14 customers are fabricating complaints that they have  
15 been switched without authorization to Santanna as  
16 their gas supplier?

17 A. No, ma'am. Santanna is not going forward  
18 operating under the belief that the complaints that  
19 we received are based on fabrications.

20 Q. But it was your testimony, though, that you  
21 weren't sure if customers just wanted to find a way  
22 out of their agreements by fabricating slamming

1       complaints. So you are now saying that Santanna is  
2       operating contrary to that belief?

3               MR. MARKOFF: Objection, mischaracterizes his  
4       testimony.

5               MS. NORINGTON-REAVES: I am asking him if  
6       that's what he is now saying.

7               JUDGE ALBERS: Overruled.

8       A. Maybe the customers have forgotten what they  
9       actually agreed to at the time.

10      Q. That's not my question. Can you please repeat  
11      the question?

12                       (Whereupon the requested  
13                       portion was then read  
14                       back by the Reporter.)

15      A. I am sure that I don't know whether or not  
16      that's what they are doing. I am sure that some of  
17      the complaints that have been reported as slamming,  
18      we go and listen to a verification tape, certainly  
19      there is no slam there. There is a very clean  
20      confirmation and sale, but it was reported as a  
21      slam.

22               MS. NORINGTON-REAVES: Move to strike the

1 response as non-responsive to the question asked,  
2 Your Honor. I have now tried to ask this question  
3 three different ways, three different times, and the  
4 witness refuses to answer the question directly.

5 MR. MARKOFF: It is plain, Judge, that counsel  
6 is not happy with the answer that he's given, but he  
7 is answering the question. Perhaps if counsel would  
8 state the entire testimony that Mr. Gatlin gave in  
9 his rebuttal, she would get a better answer. But  
10 she is only giving half of the testimony.

11 MS. NORINGTON-REAVES: I am giving the portion  
12 of the testimony that is relevant to the question  
13 that I asked. The witness has already been directed  
14 to answer the question and still has not done so.

15 JUDGE ALBERS: All right. One more time. Can  
16 you rephrase the question, perhaps? Maybe there is  
17 a problem there.

18 Q. In your initial testimony you speculate, you  
19 state -- I withdraw that. You state, "I am not sure  
20 if the customers just forgot that they had chosen  
21 Santanna or just wanted to find a way out of their  
22 agreements by fabricating slamming complaints." You

1       then testified here orally a few moments ago that  
2       Santanna is not taking the complaints as fabricated.  
3       Would you care to withdraw this statement here in  
4       your testimony?

5       A.    My testimony was that I wasn't sure which one  
6       it was, whether or not they just forgot. I am sure  
7       that any one of them that we check with a  
8       verification script and it's a very clean sale, that  
9       the customer had contended that there was a slam --  
10      my understanding of slam means no contact in its  
11      purest form -- but certainly there is very, very  
12      clean sales there that the customer contended was a  
13      slam.

14      Q.    You testified earlier, I believe, that you  
15      don't have significant experience in marketing,  
16      isn't that correct?

17      A.    That I don't have what?

18      Q.    That you do not have significant experience in  
19      marketing, isn't that correct?

20           MR. MARKOFF:  Objection, mischaracterizes his  
21      testimony.

22           MS. NORINGTON-REAVES:  He can correct me.

1 JUDGE ALBERS: Overruled.

2 A. Significant experience in telemarketing?

3 Q. In marketing, marketing, period. In other  
4 words, on what basis do you state that verifications  
5 are clean or very, very clean, as you just stated?

6 A. That it follows the script.

7 Q. Okay. And you just said something about  
8 slamming. What is your definition of a slamming?  
9 What is your understanding of what slamming is, sir?

10 A. In the cleanest, the purest sense, I saw some  
11 definition -- and I actually thought it was on some  
12 document from either CUB or the attorney general --  
13 that stated the switching of a customer without  
14 having any contact with them, in its purest form,  
15 grossest form, whatever.

16 Q. That's your understanding? It means switching  
17 without having contact?

18 A. In its grossest form.

19 Q. And if it were in a form other than its  
20 grossest, what would your definition be?

21 A. I was just trying to make a point. I fully  
22 understand that there could be a communication with



1 a customer that when you listen to that  
2 communication, somebody might have said that that  
3 was a sale and it wasn't a sale. And I think we  
4 sort of started out the testimony today with  
5 acknowledgment that there was at least one other  
6 customer that I had identified in some examples that  
7 had been overlooked earlier or that was identified,  
8 was it, Customer E? I don't remember now.

9 Q. I think it was R, is what you are referring to.

10 A. R. That's very apparently not an agreement to  
11 participate in the Santanna program. There was  
12 communication.

13 Q. So that notwithstanding -- well, what I  
14 believe I heard you limit this to is oral. What  
15 about slamming in the context of non-oral  
16 communications, written communications? What is  
17 your understanding of what that means?

18 A. That's an awfully broad question. It could be  
19 lots of things.

20 Q. Well, I have tried to narrow it. You narrowed  
21 it down so much that -- you narrowed it down so much  
22 that I could not get a response. I am now trying to

1       broaden it out again, and I still don't seem to be  
2       able to get a response. I am trying to understand  
3       what your understanding is of the term "slamming."  
4       And so far your comments have been about oral  
5       communications. Do you allow for the possibility of  
6       slamming, for example, in the context of a  
7       door-to-door sale?

8       A.     Certainly that could happen.

9       Q.     Okay. Let's move on. In your testimony at  
10      page 14 of your rebuttal you state, "From the  
11      commencement" -- I am sorry, lines 305 through 308.  
12      You state, "From the commencement of Santanna's  
13      door-to-door sales initiative on April 15, 2002, one  
14      of Santanna's door-to-door companies also required  
15      its marketers to wear pendants that said, quote, I  
16      am not a utility employee, unquote. The other  
17      door-to-door company that Santanna used instituted  
18      such a requirement in July 2002." Is that based on  
19      your own personal knowledge of their uniforms or on  
20      what others have told you?

21      A.     It's based on communications with the  
22      telemarketer with the door-to-door people, as well

1 as having observed, requested and received pictures  
2 of their staff as they are attired before going out  
3 for a sales day. The second telemarketer, I  
4 believe, that we had mentioned to them that we  
5 thought that it would be a good thing if they  
6 started wearing that same pin that says, "I am not a  
7 utility representative," to supplement the other  
8 identification that they were wearing, identifying  
9 them as a Santanna representative.

10 Q. Aside from your communications or reliance upon  
11 communications with the telemarketing or, sorry,  
12 door-to-door companies, how did Santanna monitor  
13 whether the sales force was actually complying with  
14 this uniform standard?

15 A. We had no structured monitoring process in  
16 place, other than dealing with the management of the  
17 company on a routine basis, addressing complaints,  
18 with the ultimate repercussion obviously being that  
19 the relationship between Santanna and the marketing  
20 company, if we couldn't identify problems and  
21 correct those problems, would not prevail.

22 MS. NORINGTON-REAVES: Thank you. Can we take

1 a break? I do have one more section of cross. It  
2 will be, I hope, quicker, several documents but they  
3 are all in one stack.

4 JUDGE ALBERS: Okay. Five minute break.

5 (Whereupon the hearing  
6 was in a short recess.)

7 JUDGE ALBERS: Back on the record.

8 MS. NORINGTON-REAVES: I was just going to say  
9 that with respect to CUB Cross 13, I think we had  
10 identified it, it is actually already an exhibit to  
11 Mr. Kolata's supplemental testimony. So I can  
12 withdraw this at this time.

13 JUDGE ALBERS: Okay.

14 MS. NORINGTON-REAVES:

15 Q. All right. Mr. Gatlin, I have placed before  
16 you a document identified as SES ICC 192 in the  
17 lower right-hand corner. It is two e-mails.

18 A. I have that.

19 Q. All right. My question is, what, if any,  
20 disciplinary action has Santanna or its agents taken  
21 against the sales people? Do you know if anyone has  
22 been fired?

1       A.    Well, I know -- I think I know for a fact that  
2       the two people that were involved in the  
3       intoxication issue were terminated. I guess to some  
4       extent you can say that ultimately all of them have  
5       been terminated in light of the fact that we did go  
6       ahead and suspend the program until we could address  
7       all of the complaints, CUB's issues, AG's issues,  
8       certification issues. So ultimately all of them  
9       received the -- somewhat the ultimate discipline  
10      step of not working in the program any more.

11      Q.    And so it is your testimony then that -- when  
12      you say the program, you meant the marketing  
13      program?

14      A.    Yes, ma'am.

15      Q.    And it is your testimony then that you have  
16      ceased the marketing program because of the  
17      complaints that have been received?

18      A.    Well, the complaints were certainly a part of  
19      the reason. I mean, they needed to be addressed,  
20      and there was a lot of them.

21      Q.    What's the other part of the reason?

22      A.    The other part of the reason is that we needed

1 to dedicate all of our available resources on doing  
2 everything quite well that's in front of us right  
3 now, to include addressing all of those complaints,  
4 as well as the certification hearing, the issues  
5 that we have to finalize with the CUB complaint with  
6 the ICC, the issues with the Attorney General's  
7 office, and the total completion of any lingering  
8 issue with any complaints.

9 Q. Isn't it true, though, that you also market or  
10 had intended to market on a seasonal basis?

11 A. On a seasonal basis? No, our initial plan on  
12 this program had nothing to do with a seasonal  
13 basis.

14 Q. So your original plan was that you would market  
15 year round, is that your testimony?

16 A. That's correct.

17 Q. And you would do the mass marketing that you  
18 had initiated earlier this year, you would do that  
19 all year round?

20 A. The plan was to do it all year round. But you  
21 are continuously monitoring the productivity level  
22 of the program. And even though you may have

1       planned on doing it year round for as long as the  
2       program continued to be successful, whether that be  
3       three years or five years, that doesn't mean that  
4       after a year and a half or whatever time period, if  
5       you saw that the result of the program simply wasn't  
6       productive, that you wouldn't pull the plug on it,  
7       change its plans.

8       Q.    All right. Directing your attention to the  
9       document identified as SES ICC 192, there is a  
10      reference in here to a mandatory  
11      suspension/retaining. What was that?

12     A.    What paragraph is that?

13     Q.    I am sorry, in the first paragraph on 192, the  
14      chain of e-mails, e-mail from Eric Hudson at CCI to  
15      Doug Cueller, and it is copied to two other  
16      individuals. I will return to my question. Can you  
17      tell me if these two people that it is copied to are  
18      also Santanna employees?

19     A.    No, those two people that it is copied to are  
20      employees of CCI.

21     Q.    Okay. Now, the first paragraph says, "That is  
22      the first complaint we've had from that rep, and he

1 is one of those high volume order writers.

2 Additionally, this complaint was made before the  
3 13th's mandatory suspension/retraining." Do you  
4 know what that is, the mandatory suspension or  
5 retraining, what that is or was?

6 A. I would interpret that that's his response  
7 to --

8 Q. I don't want your interpretation. I want to  
9 know if you know what that was. In other words, I  
10 don't want you to guess.

11 A. I don't think I am guessing.

12 Q. Okay.

13 A. It's my interpretation that this was a response  
14 or a comment to some of the actions that we had  
15 taken earlier where we had finally -- the complaints  
16 had obviously, from the beginning of the program to  
17 the point that they peaked, the complaints had had  
18 an increase in progression. We increasingly stepped  
19 up on our efforts to identify them, deal with them,  
20 figure out what the complaint was related to and  
21 respond to that, whether it be in altering the  
22 script to better educate the customer, whether it be



1       the inquiry to the marketing company to determine if  
2       we could identify if we had some bad apples in the  
3       barrel out there that needed to be identified,  
4       singled out, terminated from the program.

5               So at some point the activity level had  
6       just reached a point, and we had had enough  
7       incidents of complaints, that we had to obviously  
8       keep raising the bar and raising the bar. And if  
9       you can't get that thing -- if you can't see that it  
10      is coming under control, that you are reducing the  
11      number of complaints, the events, then the ultimate  
12      would be that you would terminate the relationship  
13      with that organization because you can't work  
14      together to get the thing under control. So I think  
15      we had moved another step closer to the line in the  
16      sand that we can't work together to get these  
17      complaints stopped.

18             And so that's -- that elevation of the bar  
19      was in reporting to these people that whatever we  
20      have got to do to get this thing completely under  
21      control, you know, if you have got one bad apple or  
22      three bad apples out there, we have got to get it

1 under control. You have got to raise the bar, get  
2 this thing completely cleaned up, go into an  
3 overkill mode, if you are not already there and you  
4 hadn't been there all along.

5 Q. All right. Then my question was, what is this  
6 mandatory suspension/retraining? Is it your  
7 testimony this is something Santanna ordered? Is  
8 that what you are saying?

9 A. Again, my interpretation is that that's what he  
10 is referring to, the other e-mail that you gave me a  
11 copy of here. That's Doug's comment to them, e-mail  
12 to them, communication to them that we needed to  
13 raise the bar and make more effort than we had ever  
14 made before to address any issues and complaints and  
15 stop complaints from happening, stop whatever  
16 actions are occurring to cause complaints.

17 Q. I understand what your interpretations are. I  
18 am just not so sure that's contained on the paper.  
19 I have asked now twice what was this mandatory  
20 suspension or retraining. And with all due respect,  
21 either you know what it was or you don't know what  
22 it was. So I am going to ask one more time, do you

1 know what that was?

2 A. Beyond what I have told you, I don't know.

3 Q. Okay. So you stated that you terminated your  
4 marketing campaign. Are you planning on rehiring  
5 those marketing companies, any of the marketing  
6 companies that you have previously used? Are you  
7 planning on rehiring them?

8 A. We don't have any plan in place as to what we  
9 will do when we resume the marketing program. We  
10 just haven't gotten that far. Our resources are  
11 dedicated to resolving all of the issues at hand  
12 right now. And part of those issues that we will  
13 resolve before we start the program is the creation  
14 of a plan that let's us resume the marketing program  
15 without the situation and circumstances that we have  
16 encountered to date.

17 Q. And when did Santanna notify the marketing  
18 companies that the solicitation, the marketing  
19 program, was going to end?

20 A. I don't know the exact date, but it was near  
21 the end of July.

22 MS. NORINGTON-REAVES: I am going to ask that

1       you clear off your space up there. You are not  
2       going to need any of those documents. I am going to  
3       be handing you some documents and you are going to  
4       need to lay them out for comparison.

5               JUDGE ALBERS: Before you get that far, did you  
6       want to identify these two pages that you have  
7       previously given us?

8               MS. NORINGTON-REAVES: Sure. I think the  
9       second page we can just ignore. Just mark SES ICC  
10      192 as CUB 14. And I recognize that these have yet  
11      to be admitted. I will move for that at the  
12      conclusion of my cross.

13              JUDGE ALBERS: Okay. So you have withdrawn  
14      then what was identified as --

15              MS. NORINGTON-REAVES: Document 215, I have  
16      withdrawn that.

17              JUDGE ALBERS: That was previously identified  
18      as CUB Cross 13. Did you want to keep --

19              MS. NORINGTON-REAVES: I am sorry, I thought we  
20      had previously identified CUB Cross Exhibit 13 as  
21      182.

22              JUDGE ALBERS: Yes, right. And you want to

1       withdraw that?

2               MS. NORINGTON-REAVES:   Yes, I will withdraw  
3       that one because that is already contained within  
4       the prefiled testimony of Mr. Kolata.   And then 215  
5       everyone can just disregard.   So we will mark SES  
6       ICC 192 as CUB 14, unless I am mistaken about the  
7       number.

8               JUDGE ALBERS:   All right.   We will just skip 13  
9       then as far as a proffered exhibit goes.   Off the  
10      record.

11                               (Whereupon there was  
12                               then had an  
13                               off-the-record  
14                               discussion.)

15               JUDGE ALBERS:   Okay.   We are now getting CUB  
16      Cross 15?

17               MS. NORINGTON-REAVES:   For the record I am  
18      passing out CUB Cross 15.   For the sake of  
19      identification, there are, I believe, seven pages.  
20      They are SES ICC 1 through 7.

21               MR. MARKOFF:   Ms. Norington, I think you are  
22      missing page 6.

1 MS. BUELL: I have 6.

2 (Whereupon CUB Cross  
3 Exhibits 14 and 15 were  
4 marked for purposes of  
5 identification as of  
6 this date.)

7 MS. NORINGTON-REAVES: Okay. Just there is  
8 one additional document you should have in front of  
9 you, and that's that chart that I had given you  
10 before, just so you could reference the usage dates  
11 on these documents. But other than that, we are  
12 finished with the other docs.

13 Q. All right. Directing your attention to  
14 document 001, can you identify it for the record,  
15 please?

16 A. ICC 001 is a Santanna Natural Gas gas agreement  
17 related to the NICOR Select Program.

18 Q. And according to this chart that was provided  
19 by counsel, 001 was used by Santanna from February  
20 20 through May 17 of this year, is that correct?

21 A. Correct.

22 Q. All right. Let's go through this one. On the

1 first line it says, "Yes, I would like Santanna  
2 Energy Services to help my company control natural  
3 gas prices," is that correct?

4 A. That's what it says.

5 Q. And was this contract intended for use with  
6 commercial and industrial customers?

7 A. This was a contract that was used for the  
8 residential program. The heading of the document  
9 here probably originated as a contract that was set  
10 up to be used with commercial and industrial  
11 customers. And what modifications were made to that  
12 format to customize it to the residential program,  
13 unfortunately, oversight didn't get that one word  
14 changed at the top of the contract.

15 Q. Okay. Can you tell me if there is an  
16 administrative fee for residential customers who  
17 choose Santanna as their gas supplier? Is there an  
18 administrative charge that appears on their gas  
19 bills?

20 MR. MARKOFF: Objection, lack of foundation.

21 MS. NORINGTON-REAVES: I am asking if it exists  
22 or not. I am asking him is there an administrative

1 charge. He can answer yes or no.

2 MR. MARKOFF: Current?

3 JUDGE ALBERS: Well, I think he can include  
4 that in his answer if it is a matter of currently  
5 being charged. Is that your intention?

6 MS. NORINGTON-REAVES: I beg your pardon?

7 JUDGE ALBERS: Are you asking is there  
8 currently a charge?

9 MS. NORINGTON-REAVES: I will rephrase the  
10 question, Your Honor.

11 Q. From February 20 through May 17 was there an  
12 administrative charge for residential customers?

13 A. No, ma'am.

14 Q. No, there was not?

15 A. On customers that were signed up under the  
16 utilization of this contract, there was no  
17 administrative fee.

18 Q. Okay. And would that include customers who  
19 were telemarketed during this same time frame? Was  
20 there an administrative fee in existence at that  
21 time?

22 A. I don't believe that there was.



1 Q. Okay. Can you point to me where in this  
2 contract there is any mention of Santanna's storage  
3 program or policy, if you will?

4 A. I think we covered it just as clearly in this  
5 contract as we did in the initial telemarketing  
6 script. In other words, it's not there.

7 Q. Okay. And during the period from February 20  
8 through May 17, what was the termination fee, if any  
9 -- I am sorry, what were the number of days that a  
10 customer was given to cancel service with Santanna,  
11 whether stated in this contract or not?

12 A. To the best of my recollection, all of the  
13 initial efforts that were made at the beginning of  
14 this time period were made through the telemarketing  
15 effort. But my memory has it that the customer had  
16 90 days from the date that they agreed to  
17 participate with Santanna in the program.

18 Q. Okay. And here in this contract can you  
19 identify anywhere where the 90-day cancellation  
20 period is stated?

21 A. I don't see any statement about cancellation in  
22 there, other than the 30 days.

1 (Pause)

2 Q. I am sorry, I was assuming that you weren't  
3 finished. You said -- was that a complete --

4 A. There is no statement in there about  
5 cancellation, other than the 30 days.

6 Q. And I believe my question was, where do you see  
7 the 90-day cancellation herein?

8 A. I don't see the 90-day in here. But I guess I  
9 am questioning in my mind whether or not there were  
10 any residential customers signed up under this  
11 contract.

12 Q. Well, this was produced as a contract that was  
13 in use during this period for the residential  
14 customer program. And if you look at this chart  
15 that was prepared, it says method of use was  
16 door-to-door, dates of use February 20 to May 17.  
17 Is there a correction that you would like to make?

18 A. I just have no recollection of us having any  
19 contract that the customer executed that gave them  
20 any less than that timing to cancel the relationship  
21 with Santanna.

22 Q. Okay. Let's move onto the second document, SES

1       ICC 002. According to the chart here, this document  
2       was used from May 1 to May 17 by the door-to-door.  
3       Can you identify this one?

4       A.    It appears to be a contract available for  
5       utilization either by the residential or the  
6       commercial on a customer sales SES contract.

7       Q.    Okay. And the header of this one says, "I want  
8       Santanna Energy Services to help me control my  
9       natural gas prices"?

10      A.    Yes, ma'am.

11      Q.    The customer isn't really in control of their  
12      gas prices, are they?

13           MR. MARKOFF: Objection, calls for speculation  
14      and foundation --

15      A.    I don't think this says that --

16           JUDGE ALBERS: Hang on. We have got an  
17      objection. Would you repeat the last part?

18           MR. MARKOFF: Calls for speculation and lack of  
19      foundation. What a customer --

20           JUDGE ALBERS: Speculation on the part of what?  
21      By one customer?

22           MR. MARKOFF: Yeah, Ms. Norington asked the

1 customer isn't really in control, is he. I don't  
2 remember, he or she or something along those lines,  
3 we haven't identified any customer.

4 JUDGE ALBERS: Can you --

5 MS. NORINGTON-REAVES: I don't think it's  
6 necessary to identify any customer. It is a general  
7 question. I will be more than happy to rephrase.

8 Q. It says, "I want Santanna Energy Services to  
9 help me control my natural gas prices." If you  
10 claim no control over the gas deliveries that you  
11 must make to a customer as a result of your  
12 agreements with the gas utilities, you can't really  
13 help the customers control their natural gas prices,  
14 can you?

15 A. This doesn't say that anyone is in control of  
16 natural gas prices. It says, "I want Santanna to  
17 help me control my natural gas prices." We  
18 demonstrated through promotional material that if  
19 you took the program that Santanna is offering and  
20 you compared it to the past, that the past showed  
21 that there was a reduction to their gas prices  
22 through the Santanna program versus buying the gas

1 from the utility. Does that not help them control  
2 their natural gas prices?

3 Q. Well, with all due respect, I don't have to  
4 answer questions in this proceeding.

5 A. It was a statement more than a question. I am  
6 sorry.

7 Q. First paragraph, I just want to direct you  
8 through this. During the time from May 1 through  
9 May 17 was there an administrative fee, to the best  
10 of your knowledge, for residential gas customers in  
11 the Santanna program?

12 A. I don't recall the specific date that we  
13 initiated the administrative fee. To the best of my  
14 knowledge if it is not in this contract, then it  
15 shouldn't have been charged during that time period.

16 Q. And can you point to me, point out to me in  
17 this document, where you reference the storage  
18 program?

19 A. No, I cannot.

20 Q. Let me ask you, do you feel that this contract  
21 adequately discloses in plain language the prices,  
22 terms and conditions of the products and services

1       being offered and sold to the customer by Santanna?

2       A.    Yes, I do.

3       Q.    And with respect to the first document that you  
4       looked at, the contract that was in usage from  
5       February 20 through May 17, do you also feel that  
6       this document adequately discloses the prices, terms  
7       and services -- prices, terms and conditions of  
8       service?

9       A.    I think that anyone that this contract was used  
10      with, that they were adequately disclosed. I am not  
11      sure that any residential customers were signed up  
12      under this contract.

13      Q.    Okay. Going to document 3, according to the  
14      chart this document was in usage from May 17 through  
15      July 8. Can you identify this?

16      A.    Yes, ma'am. It appears to be a Santanna Energy  
17      Services contract, gas sales contract, related to  
18      the NICOR Select Program.

19      Q.    And the first line here says, "I would like  
20      Santanna Energy Services to help my company control  
21      natural gas prices," isn't that correct?

22      A.    Yes, it does.

1 Q. And you just stated that this was for use with  
2 the Customer Select Program, a residential program,  
3 isn't that correct?

4 A. Yes, ma'am.

5 Q. So to the extent that there is any reference to  
6 a company, that is in error?

7 A. I think you are seeing the same oversight that  
8 continued on from the first contract we referenced.

9 Q. Okay. And in the first paragraph here entitled  
10 Price, the lower portion of the contract, the last  
11 sentence says, "There will be an administrative  
12 charge of \$3 per month. All utility company-related  
13 charges are the responsibility of the buyer." With  
14 respect to that administrative charge, since this  
15 document states that it was in use from May 17  
16 through July 8, would it be your testimony that the  
17 administrative charge was charged to customers  
18 during that time period?

19 A. I think that that would represent the time  
20 period in which it was implemented.

21 Q. And can you tell me if anywhere in this  
22 document you see any reference to storage program?

1 A. No, ma'am, I don't.

2 Q. And do you see any reference to the 90-day  
3 cancellation period?

4 A. I am sorry?

5 Q. Do you see any reference to a 90-day  
6 cancellation period or window?

7 A. Second paragraph, fourth line down.

8 Q. Okay. And is it your testimony that this  
9 document adequately discloses in plain language the  
10 prices, terms and conditions of the products and  
11 services being offered by Santanna to residential  
12 customers?

13 A. Yes, ma'am.

14 Q. Moving onto document number 4, SES ICC 004, can  
15 you identify this for the record, please?

16 A. It appears to be a Santanna Natural Gas --  
17 Santanna Energy Services gas sales contract related  
18 to the NICOR Select Program.

19 Q. And again in this first line here it says,  
20 "Yes, I would like Santanna Energy Services to help  
21 my company control natural gas prices," isn't that  
22 correct?



1 A. Yes ma'am.

2 Q. So just as with the previous documents, any  
3 reference to company or business or anything that  
4 would be non-residential would be in error?

5 A. Well, it just looks like each time that  
6 template was updated, somehow or other the word  
7 "company" made it through all those revisions.

8 Q. Okay. And according to the chart this document  
9 was in use from July 9 through July 15, is that  
10 correct?

11 A. Yes, ma'am.

12 Q. All right. And this document, does it contain  
13 a reference to an administrative charge of \$3?

14 A. Yes, it does.

15 Q. And does this document reference the 90-day  
16 cancellation period that you mentioned earlier?

17 A. No, it references 60 days from first delivery.

18 Q. Was this a policy change at Santanna?

19 A. The first representation was 90 days from the  
20 date of the agreement. And I guess the answer to  
21 your question is, yes, 90 days from the date of the  
22 agreement. But that wasn't as definable and as

1       recordable event from the standpoint as data bases  
2       as identifying what the first date of service was  
3       from the utility. In reality the two may be  
4       approximately the same time period.

5       Q.     Okay. And then I see a reference here to an  
6       exit price, if you will, a charge for terminating.  
7       It says, "Buyer shall pay seller a hundred dollars."  
8       In previous documents can you identify any charges  
9       for terminating service with Santanna?

10      A.     Could you repeat the question, please?

11      Q.     Sure. The first -- the document I was  
12      referencing was SES 004. And on that I notice that  
13      there is a charge for early termination, if you  
14      will, where the buyer shall pay the seller \$100.  
15      And I was asking you if you could identify for me  
16      the termination or early termination fee identified  
17      in any of the previous contracts.

18      A.     Yes. In each one of the three prior contracts  
19      prior to this revision, the early termination fee  
20      was defined as three cents per therm multiplied  
21      times the remaining deliveries for the remaining  
22      term of the uncompleted three-year term. In the

1       modification in this contract, that termination fee  
2       was more clearly defined as just an identified  
3       dollar amount, rather than some calculation times.

4       Q.     And directing your attention to the last three  
5       documents, 5, 6 and 7, it's my understanding that  
6       these should be taken together as one. Am I right  
7       about that? I believe on this chart it is  
8       compiled -- it is identified as one group. So I am  
9       assuming that this is a three-page contract. Am I  
10      correct in that assumption?

11     A.     I don't think so. I think what the chart  
12      represents is that those three documents were all  
13      put into service on 7/15, but they weren't  
14      necessarily part of a single unit package.

15     Q.     Okay. And this document 005, could you  
16      identify it, please?

17     A.     Yes, ma'am. It's a Santanna Energy Services  
18      natural gas sales contract for the NICOR Select  
19      Program, residential.

20     Q.     All right. And this contract was apparently  
21      used from July 15. Could you say that it is used --  
22      still being used at the present?

1       A.    I am not aware of any changes that have been  
2       made to this contract.  So, yes.

3       Q.    Okay.  So it is presently being used?

4       A.    Yes, ma'am.

5       Q.    All right.  You previously testified that you  
6       stopped marketing as of, I believe it was, July 31?

7       A.    Yes, ma'am.

8       Q.    So can you explain to me the context in which  
9       this docket is being used if you are no longer  
10      marketing?

11      A.    It is in effect for any new customers that were  
12      to be signed up.  It is not being used.  There is no  
13      marketing program going on.

14      Q.    And how would a new customer be signed up?  If  
15      you are not actively marketing, how would a new  
16      customer be signed up?

17      A.    I don't know.  Someone call up and say they  
18      would really like to get on this program; would it  
19      be okay if they signed up with Santanna.  And we  
20      would not turn away business.  But we are not out  
21      marketing, soliciting.

22      Q.    I understand.  Let's go through this one.  Do

1       you see the administrative charge -- well, actually  
2       what this says is, "Buyers shall also pay an  
3       additional fee of \$3 a month to seller." Can you  
4       tell me if anywhere in this document it explains  
5       what that additional fee is for?

6       A.     No, ma'am.

7       Q.     And this, like the previous document, contains  
8       the \$100 early termination fee, it's actually  
9       defined as such in this one, is that correct?

10      A.     Yes, ma'am.

11      Q.     And this one, the cancellation period is  
12      60-days, is that correct?

13      A.     Sixty days from first date of service.

14      Q.     Okay. And this document actually contains a  
15      reference to storage, does it not?

16      A.     Yes, ma'am.

17      Q.     So the first time during these marketing  
18      efforts that a contract, a residential customer  
19      contract, contained a reference to storage program  
20      was July 15?

21      A.     Yes, ma'am.

22      Q.     And in this quantity/storage section, trying to

1 find the sentence here, it states, "If either party  
2 terminates this agreement, seller will credit buyer  
3 for the gas remaining in buyer's storage account at  
4 the end of the last day. Buyer is a customer of  
5 seller per NICOR as follows: The rate of 90 percent  
6 of the most recently published NGI weekly index  
7 prior to the last day of service which is the same  
8 calculation method used by NICOR," is that correct?

9 A. Yes, ma'am.

10 Q. Now, in your rebuttal testimony -- I am sorry,  
11 I did tell you to put all of your documents away.  
12 If you could just reference your rebuttal testimony,  
13 that Exhibit 1.02, that's one of your attachments?

14 A. Okay.

15 Q. There is a letter. I believe it's a letter.  
16 Can you identify what this document is? Can you  
17 identify the document, please?

18 A. Yeah, it's a -- let me look at it for a second.

19 Q. Sure, go ahead. Just let me know when you are  
20 ready.

21 (Pause)

22 A. Yes, this is a Santanna letter that we sent out

1 to a customer who had requested termination from the  
2 Select Program.

3 Q. So you sent this to a specific customer, but am  
4 I correct in assuming that this was a form letter?

5 A. Yes, it is.

6 Q. And this is in response to a termination  
7 request, if you will?

8 A. Yes, ma'am.

9 Q. So this would be the letter that customers  
10 would receive?

11 A. Not necessarily today but at the time this  
12 letter was in effect.

13 Q. Do you know the time frame for this letter  
14 having been in effect? All right. I see it. July  
15 16 through 02, if you look at your document chart.  
16 Do you see that?

17 A. Yes, it's through today, isn't it?

18 Q. So that did you want to correct that?

19 A. Yes, this letter appears to be in effect today.

20 Q. Okay. And the letter says I am directing you  
21 to the third paragraph on the first page, the very  
22 first sentence, and it says, "Once your account has

1       been closed, any excess number of therms of gas in  
2       your account will be valued at 90 percent of the NGI  
3       weekly," is that correct?

4       A.     Correct.

5       Q.     And I understand that you are not an attorney?

6       A.     Say it again?

7       Q.     I say I understand that you are not an  
8       attorney, but based on your understanding of  
9       agreements and based on your experience, this term,  
10      this condition that the gas would be valued at 90  
11      percent of the NGI weekly, that would really only be  
12      applicable to the customers who signed an agreement  
13      to that effect, isn't that true?

14      A.     Any customer who entered into an agreement that  
15      had those terms and conditions.

16      Q.     So that term and condition does not apply to  
17      customers who are enrolled under the first contract  
18      that we went through, is that right?

19      A.     It doesn't appear -- no, it does not.

20      Q.     And then for the second contract, that term  
21      also would be inapplicable, isn't that correct?

22      A.     The point on the first contract is that any



1 residential customer that signed up under that  
2 contract in a cash-out scenario would not be -- the  
3 cash-out would not be calculated at 90 percent of  
4 NGI.

5 Q. Right. And my point is this term in this  
6 cancellation letter would only be applicable to  
7 those customers who agreed to this in their  
8 contract. And what we have before us, looking at  
9 ICC 002, customers who were signed up under this  
10 contract would not be subject to that term, isn't  
11 that correct?

12 A. If they signed up under this contract, that's  
13 correct.

14 Q. All right. I am not sure which one you are  
15 looking at, the first one or the second.

16 A. The first contract.

17 Q. Now I am directing you to the second one. And  
18 that same question is also true, correct, for the  
19 second? The same point is also true for the second  
20 contract?

21 A. That appears to be true. I see no language in  
22 there associated with that.

1 Q. And it is also true for the third contract?

2 A. Yes, ma'am, anyone that signed up under the  
3 contract listed as ICC 003.

4 Q. And that would also be true for anyone who  
5 signed up under the fourth contract as well, isn't  
6 that true?

7 A. That would be correct.

8 Q. Going back to SES ICC 005, this now -- this  
9 contains an arbitration clause, does it not?

10 A. My contract is smeared over on the ends so I  
11 can't read all of it, but I think that's correct.

12 Q. I can give you a fresh copy of this one.

13 A. Yes, I can read that part, American Arbitration  
14 Association. Yes, ma'am, it does.

15 Q. And did any of the previous contracts contain  
16 an arbitration clause?

17 A. No, they do not, to the best of my  
18 recollection.

19 Q. This contract also contains at the bottom a  
20 notice of cancellation. Was this placed on here in  
21 an effort to comply with Illinois state door-to-door  
22 sales laws?

1 A. Is that an effort to --

2 Q. Was this notice of cancellation statement here  
3 added to this contract in an effort to comply with  
4 Illinois door-to-door sales laws?

5 A. I guess that the answer to that is yes.

6 Q. Did you review this contract?

7 A. Did I review this contract?

8 Q. Uh-huh.

9 A. I think the answer to that is yes.

10 Q. And did you review the other contracts?

11 A. I think the answer to that is yes.

12 Q. Did you suggest any changes to any of the  
13 contracts?

14 A. I am sorry?

15 Q. Did you suggest any changes to any of these  
16 contracts throughout the course of this marketing  
17 program?

18 A. Very possibly.

19 Q. Okay. Can I ask you, when you inserted -- not  
20 you personally but Santanna the company -- when  
21 Santanna inserted this arbitration clause into the  
22 contract on 005, was this intended to limit the

1 customer's right to pursue a remedy in court or any  
2 other remedies under the Public Utilities Act?

3 A. We never had an intent to limit the customer's  
4 rights. You know, we conferred with counsel about  
5 modifications in the contract, and that was one of  
6 the things that we worked out through him that  
7 should be in the contract. There was no ulterior  
8 motive to limit anyone's rights. I think generally  
9 arbitration is viewed as a preferable route over  
10 having to file a suit over an issue, if it can be  
11 settled in arbitration.

12 Q. Viewed by whom?

13 A. Everyone, in my opinion.

14 Q. But you recognize that this arbitration clause  
15 is binding, and that if a customer were to pursue  
16 this route, the judgment rendered in the course of  
17 that proceeding would be binding upon them?

18 MR. MARKOFF: Objection, calls for a legal  
19 conclusion.

20 MS. NORINGTON-REAVES: No, it does not. He can  
21 read the language contained in here. It says any  
22 award rendered by the arbitrator shall be binding.

1 He can draw his own conclusion from that. I have  
2 already acknowledged that he is not an attorney. I  
3 have not asked him for a legal conclusion.

4 MR. MARKOFF: If you would like him to read the  
5 clause, have him read the clause. You have now  
6 asked him to analyze it and determine whether it is  
7 binding.

8 MS. NORINGTON-REAVES: Judge Albers, I will  
9 take my direction from you.

10 JUDGE ALBERS: Thanks. The contract says what  
11 it says. I am going to go ahead and sustain that  
12 objection.

13 Q. And just another question with respect to this  
14 document 005. Is it your belief or is it your  
15 testimony here today, Mr. Gatlin, that this document  
16 005 adequately discloses in plain language the  
17 prices, terms and conditions of the products and  
18 services that Santanna is offering to residential  
19 customers?

20 A. Yes, ma'am, I believe it does.

21 Q. And I don't believe I asked you this with  
22 respect to document number 4. If I have, please

1       forgive me. But just for the sake of clarification,  
2       is it also your testimony that number 4 does the  
3       same, that this adequately discloses in plain  
4       language the prices, terms and conditions of the  
5       products and services that Santanna is offering?

6       A.    I thought you did ask and I think the answer  
7       was that anyone that is signed up under that  
8       contract.

9       Q.    That it did?

10      A.    That it accurately disclosed it.

11           MS. NORINGTON-REAVES:  Okay. I have another set  
12      of documents I would like for you to look at.  This  
13      is going to be CUB Cross 16, everyone.

14           THE WITNESS:  Are we through with all of these  
15      documents?

16           MS. NORINGTON-REAVES:  No, you are going to  
17      need them.  I would suggest you keep them spread  
18      out.

19                           (Whereupon CUB Cross  
20                           Exhibit 16 was marked  
21                           for purposes of  
22                           identification as of

1                   this date.)

2       Q.     I have placed before you a set of contracts  
3       that were signed, presumably signed by customers.  
4       And I would like for you to -- let's start with the  
5       first one.

6           JUDGE ALBERS:   Is there any way we can maybe  
7       speed things up a little bit, instead of going  
8       through them individually?

9           MS. NORINGTON-REAVES:   Okay.   Yes, I can pick  
10      out certain ones.

11          JUDGE ALBERS:   Okay.

12          MS. NORINGTON-REAVES:   But I would nonetheless  
13      move to have all of them admitted.   There is a  
14      reason for that.

15          JUDGE ALBERS:   I was afraid you were going to  
16      go through each one of them individually.

17          MS. NORINGTON-REAVES:   No, I will be selective.  
18      I will go through, how about, three or four.

19          JUDGE ALBERS:   Let's start with that at least  
20      and we will see where you are going.

21      Q.     All right.   Thank you.   Let's look at the first  
22      document.   This is dated June 28, '02.   It purports

1 to be a contract between Santanna and a customer  
2 with the initials LB. Could you look through the  
3 contracts that I have walked through with you and  
4 identify the contract that this contract appears on?

5 A. I have already been looking in this stack for  
6 this contract, and I don't see it.

7 Q. And, in fact, given a date of June 28, it  
8 should appear on which form?

9 A. Based on the information that we gave you on  
10 this sheet, that is presented on this sheet, it  
11 should be on ICC 003.

12 Q. Okay. But it's not, is it?

13 JUDGE ALBERS: What was the question you asked?

14 Q. He said it looks like it should be form 003 and  
15 I said, "But it's not, is it."

16 A. I am looking for the changes and I haven't been  
17 able to find the changes. I haven't been able to  
18 find the difference. They may be here, but I  
19 haven't been able to find the difference.

20 Q. Okay. Let's go to another one. Let's go to  
21 227. And these are in numerical order so let's go  
22 to form 227.



1 A. Tell me one more time what I am going to.

2 Q. Going to form 227. It's the Santanna Bates  
3 number that's been assigned to it in the lower  
4 right-hand corner.

5 A. Yes, ma'am.

6 Q. Okay. This contract was signed on May 13, and  
7 according to the chart can you identify what form  
8 this should be on?

9 A. ICC 002.

10 Q. Is there any other form?

11 A. I am sorry?

12 Q. Is there any other form that it might  
13 potentially be on? Let me help you out here. If  
14 you look at form number 1, it says the date of usage  
15 was 2/20 to 5/17. Form number 2 also has a date of  
16 usage 5/1 to 5/17. So given that this contract was  
17 signed on May 13, this should appear -- this  
18 contract should have been on either one of these two  
19 forms, is that correct?

20 A. According to the date presentation, that's  
21 correct.

22 Q. All right. And can you tell me if it does

1 indeed appear on either of those forms?

2 A. This contract that you gave me from S...?

3 Q. SC.

4 A. From SC, does not appear to be on either one of  
5 those contracts.

6 Q. Direct your attention to 236. 236. The  
7 initials of the customer would be KK?

8 A. Yes, ma'am.

9 Q. And this contract was signed on May 14 which  
10 according to this chart means that it should be on  
11 either form 01 or 02. Can you tell me if it is  
12 indeed on either of those forms?

13 A. I can't read this revision date on this 236.  
14 Is that legible on your copy?

15 Q. Yes, it is. And, actually, every single one of  
16 these has the same revision date of February 27,  
17 '02, and you can check that, if you would like.

18 A. No, it's not on either one of those exact forms  
19 that you refer to, 002 or 001.

20 Q. Just a detour a little bit. If you flip to the  
21 next page, 237, without identifying the names, if  
22 you could go back and forth between these two

1 documents and tell me what you recognize about the  
2 customer name and account?

3 A. The name is the same.

4 Q. Right. On the first one it is signed by whom?

5 A. The first one being 237?

6 Q. 236, and using initials only.

7 A. It appears to be signed by KK.

8 Q. And we can assume that that's a female, given  
9 the first name. The second page, 237, the same last  
10 name, except this time the initials would be RK, am  
11 I correct?

12 A. Same account number. It's the same customer,  
13 is that correct? Is that the inspection we are  
14 trying to make?

15 Q. I am asking you. Do you notice any  
16 similarities between the two contracts?

17 A. Well, I notice that the customer name is the  
18 same name. The billing name is the same name. I  
19 noticed that one of them is signed by -- and I might  
20 note that the signature, the execution dates on  
21 these contracts, is a month apart. One is 5/13 and  
22 the next is 6/13.

1 Q. And it's the same household?

2 A. Same household.

3 Q. Same account number?

4 A. Yes.

5 Q. Same meter number?

6 A. Yes.

7 Q. Same telephone number?

8 A. Yes.

9 Q. Two different representatives, though, and two  
10 different contracts, am I right?

11 A. It's got two different formats, yes. I don't  
12 know that it's two different contracts because I  
13 haven't read the language.

14 Q. Okay. I am more than happy to permit you time  
15 to do that. However, I would note that 236,  
16 according to your chart and the fact that this was  
17 signed on May 14, can you identify the contract -- I  
18 am sorry, I think you already did identify the form  
19 on which that agreement should have appeared. What  
20 about 237? This was signed on June 13?

21 A. According to the spreadsheet that we are  
22 referencing here, a 6/13 utilization document would

1 fall into 5/17, or 6/17 range, excuse me.

2 Q. So the appropriate document would be?

3 A. It says ICC 237, says that on this page.

4 Q. Beg your pardon? No, because what they are  
5 talking about is the method of use. If you look at  
6 the -- I am asking you, based on this document, ICC  
7 237, the fact that it is signed on June 13, which of  
8 the four contract forms or five contract forms I  
9 have placed before you should this particular  
10 agreement appear on? It's the same question that I  
11 have asked you about the other contracts. With it  
12 being signed on June 13, which contract should have  
13 been used?

14 A. 003.

15 Q. Right. And is this 003 that the contract  
16 appears upon?

17 A. Well, again, the format appears different. I  
18 don't know if the language is the same because I  
19 haven't compared the languages.

20 Q. Okay. 17.

21 (Whereupon CUB Cross

22 Exhibit 17 was marked

1                   for purposes of  
2                   identification as of  
3                   this date.)

4                   I just have one more contract I want you to  
5           take a look at. Look at document 250.

6           A. I am there.

7           Q. Given the date that this was signed which was  
8           June 6, can you identify the contract form that this  
9           should have appeared on?

10          A. According to this table, it should have been  
11          003.

12          Q. Okay. Can you determine from looking at 003  
13          and 250 whether they are on the same form?

14          A. The revision date on the contract that you are  
15          referring to, ICC 250, the revision date stated at  
16          the bottom appears to be a different revision date,  
17          but the format and the contract appears to be the  
18          same as ICC 003, based on a quick scan through here.

19          Q. Okay. Directing your attention to the document  
20          that I left with you a moment ago, I believe it's  
21          SES ICC 209, can you identify it, please?

22          A. An e-mail from Eric Hudson to Doug Cueller,

1 Eric Hudson with Consumer Choice Incorporated to  
2 Doug Cueller in the Santanna Hinsdale office, and a  
3 reply from Doug Cueller back to Eric Hudson.

4 Q. And what is the date on the second message  
5 there, Eric to Doug?

6 A. Both messages are dated June 28.

7 Q. Okay. And directing your attention to the last  
8 sentence in the first paragraph beginning with the  
9 word "finally," it says --

10 A. We are under Eric Hudson's to Doug?

11 Q. Right. "Finally, the modified order form  
12 including initial spaces for the customer on the  
13 customer awareness section should both help to  
14 solidify the sale at the door." Could you identify  
15 which, if any, of the contracts that you have before  
16 you, the forms 1 through 5, contain a customer  
17 awareness section with initial spaces as described  
18 in this message?

19 A. The first one I come to in the example sets of  
20 contracts that you gave me?

21 Q. Yes, sir.

22 A. The first one that I come to that has a

1 customer awareness section in it is ICC 002.

2 Q. Okay. This has a customer awareness section  
3 with initial spaces, correct?

4 A. Say again?

5 Q. This has a customer awareness section with  
6 initial spaces, in other words a space for a  
7 customer to initial?

8 A. Yes, it does.

9 Q. And according to this message -- well, strike  
10 that. According to the chart produced by Santanna,  
11 when was this contract in use?

12 A. According to the chart, it went into use May 1  
13 through May 17.

14 Q. So this was used for approximately two weeks in  
15 May, but at the end of June Mr. Hudson is  
16 referencing a modified order form including initial  
17 spaces for the customer on the customer awareness  
18 section, right?

19 A. That's what it appears, unless there is some  
20 other modified order form with initial spaces.

21 MR. MARKOFF: Can I have the question read  
22 back, please?



1                   (Whereupon the requested  
2                   portion was then read  
3                   back by the Reporter.)

4       Q.    Do you know what companies, besides presumably  
5       CCI, may have used that form?

6       A.    No, I do not.

7       Q.    And this was a form that actually would in some  
8       ways insure you, Santanna that is, that the customer  
9       is clear on the terms, prices and conditions of  
10      service, yet it was only used for two weeks, isn't  
11      that correct?

12      A.    According to this table, it was only used for  
13      two weeks.  According to this, I thought we had a  
14      contract that was signed later than that.  According  
15      to this table, that's correct.

16      Q.    And, actually, if you look, for example, at --  
17      let me use a document I have already had you look  
18      at.  I don't see one.  If you look at again at  
19      document 237 which you have already reviewed, the  
20      customer awareness portion on 237 and the customer  
21      awareness portion on 002 are different, are they  
22      not?

1 A. Yes, they are.

2 Q. In fact, the one in 002 would have required the  
3 customer's signature and date as well as the  
4 customer initialing their understanding for about  
5 five different statements, isn't that correct?

6 A. Yes, it did.

7 Q. And the one reflected on SES ICC 237 simply has  
8 bulletpoints and no signature space in that portion?

9 A. No initials.

10 Q. No initials and no signature space in that  
11 portion?

12 A. Correct.

13 MS. NORINGTON-REAVES: Thank you. I just want  
14 to direct your attention quickly. I think this is  
15 only about seven documents so I would like the  
16 latitude to go through these quickly.

17 JUDGE ALBERS: Extremely quickly.

18 MS. NORINGTON-REAVES: Yes, sir.

19 (Whereupon CUB Cross  
20 Exhibit 18 was marked  
21 for purposes of  
22 identification as of

1                   this date.)

2           Q.     Document 290, there is no account or meter  
3           number on this contract, isn't that correct?

4           A.     That is correct.

5           Q.     Document 291, can you identify for me a  
6           signature on that page?

7                   MR. MARKOFF:  Objection.

8                   JUDGE ALBERS:  Excuse me?

9                   MR. MARKOFF:  Objection, calls for a  
10          handwriting analysis.

11                  MS. NORINGTON-REAVES:  Your Honor, I think any  
12          lay person can identify what looks like a signature  
13          versus handwriting or printing.

14                  MR. MARKOFF:  Is there case law that says --

15                  MS. NORINGTON-REAVES:  You do not have to be a  
16          handwriting expert.

17                  JUDGE ALBERS:  We will take his lay opinion  
18          here.

19                  MS. NORINGTON-REAVES:  Thank you.

20           A.     There is no signature shown on the authorized  
21           signature line.

22                  MR. MARKOFF:  I am sorry, if I could just

1       continue for making the record. I don't think there  
2       is any requirement that a signature be in cursive or  
3       anything of that nature.

4               JUDGE ALBERS: We will take it for what it is  
5       worth.

6       Q.     In your opinion would this contract as  
7       completed, looking at it here today, would this be  
8       sufficient in your opinion to enroll a customer into  
9       the Santanna residential gas supplier program?

10      A.     I don't know how CC -- would CC have a  
11      signature. Most of us do. I would assume CC would.  
12      So the normal would be that you would expect to see  
13      a signature on the authorized signature line.

14              MS. NORINGTON-REAVES: Okay. I am going to  
15      stop there on that. I just have one closing  
16      question. Actually, I am sorry, can we make that  
17      two closing questions?

18              JUDGE ALBERS: As long as they are quick ones.

19      Q.     Okay. Isn't it true that if Santanna is denied  
20      certification through this process, that the  
21      customers will just return to their incumbent  
22      carriers, isn't that correct?

1       A.     That would be my understanding of what would  
2       happen.

3       Q.     And you testified earlier that Santanna has  
4       been a successful marketer of natural gas for  
5       approximately 14 years and that the company's  
6       revenues have averaged approximately \$30 million  
7       per year, isn't that correct?

8       A.     Gross revenues, approximately. I don't have  
9       anything to reference it to.

10      Q.     Okay. And in the event that Santanna is denied  
11      certification to market to residential customers,  
12      Santanna will not go out of business, isn't that  
13      correct?

14      A.     I cannot answer yes to that question.

15      Q.     Isn't it true that if Santanna is denied  
16      certification for marketing to residential  
17      customers, that Santanna will continue to market to  
18      its commercial and industrial customers?

19      A.     That will certainly be Santanna's intention, if  
20      we are not so significantly financially harmed that  
21      we have control over stopping it.

22             MS. NORINGTON-REAVES: Thank you. I actually

1           have no further questions.

2           JUDGE ALBERS: All right. What about the  
3           numerous cross exhibits?

4           MS. NORINGTON-REAVES: At this time I would  
5           move to admit all of the exhibits that have been  
6           identified thus far by CUB.

7           JUDGE ALBERS: Well, the only two that  
8           haven't -- I am sorry, the only ones that have been  
9           admitted are CUB Cross Exhibits 1 and 2. 3 through  
10          18, excluding 13, are not admitted. Are there any  
11          objections to any of these?

12          MR. MARKOFF: Yes, but I am going to need a  
13          minute.

14                               (Whereupon there was  
15                               then had an  
16                               off-the-record  
17                               discussion.)

18          MR. MARKOFF: Judge, as to CUB Cross 3, I would  
19          object for lack of foundation. As counsel stated,  
20          this should be a document created by CCI, not  
21          Santanna. Therefore, there is no foundation laid in  
22          the creation of it or anything of that nature, so

1           it's hearsay and lack of foundation actually.

2           MS. NORINGTON-REAVES: This is a document that  
3           was produced by Santanna in response to a DR.

4           MR. MARKOFF: It is produced, yes, but  
5           discovery production certainly doesn't make a  
6           document admissible into evidence.

7           JUDGE ALBERS: In principle I will agree with  
8           that. Are you saying, though, that you question  
9           what your agent has provided to you?

10          MR. MARKOFF: No, I am saying that there is no  
11          testimony whatsoever that there is any verification  
12          of anything that is in there because it was provided  
13          by CCI. I mean, who knows if CCI provided accurate  
14          information or not.

15          MS. NORINGTON-REAVES: Well, to the extent that  
16          there is independent corroboration of these  
17          complaints contained in the complaints that CUB has  
18          provided, the complaints that the AG's office has  
19          provided, the complaint that Santanna has provided  
20          in response to data requests, coupled with the fact  
21          that we have the testimony of Mr. Gatlin who says  
22          Santanna does not question -- they are not taking

1       these complaints as being fabricated, they are  
2       basically taking them as true and addressing each  
3       one of them.

4               Additionally, with respect to the hearsay  
5       complaint, hearsay objection, and this is not only  
6       for this document but for all the rest to the extent  
7       that there is a hearsay question, we would ask that  
8       the Judge take administrative notice of the  
9       administrative law judge's ruling in 01-0662. I  
10      will pass out that copy.

11             JUDGE ALBERS:   Which proceeding?   The Ameritech  
12      271 proceeding?

13             MS. NORINGTON-REAVES:   Yes, sir.

14             JUDGE ALBERS:   It didn't sound like one of  
15      mine.

16             MS. NORINGTON-REAVES:   I don't believe I said  
17      Your Honor's ruling; I said the judge's ruling.

18             MR. MARKOFF:   If I may further, I don't know  
19      the background of this other docket or what exactly  
20      it was that was being addressed.   But it really  
21      seems to talk about it's not the truth of the matter  
22      asserted in the out of court statement.   In this



1 instance, the mere making of the statement is the  
2 significant factor which is involved. And clearly  
3 CUB is trying to get this in for the truth as stated  
4 by the corroboration statement by counsel. There  
5 have been no exceptions shown and, moreover, I go  
6 back to my initial objection that there is no  
7 foundation laid whatsoever regardless.

8 MS. NORINGTON-REAVES: Your Honor, we could  
9 also argue that these documents are business records  
10 in light of the fact that, number one, these  
11 companies are Santanna's agents, which has been  
12 acknowledged in the testimony. Number 2, the  
13 various e-mail communications were Santanna's way of  
14 exercising some level of oversight, as has already  
15 been attested to today. Number 3, Santanna  
16 requested that this document be compiled in order to  
17 share with the parties in this case. It was at  
18 their instruction. It is their agent, and it is  
19 clearly a record. They have clearly kept a record  
20 of various complaints that have come in, and they  
21 have provided it to us in summary form.

22 JUDGE ALBERS: Let me ask you this, are you

1 offering this, just so I am clear, to demonstrate  
2 with the intention that these particular complaints  
3 be taken as true, as having actually happened?

4 MS. NORINGTON-REAVES: No. And I believe if we  
5 had the opportunity to go back to look at my line of  
6 questioning around this, my questions -- I can go  
7 through my outline -- my questions regarded  
8 allegations and Santanna's awareness of allegations  
9 and allegations of different types. Number one --  
10 well, I won't go through --

11 JUDGE ALBERS: That's the way I recall it  
12 happening, but I wanted to be clear, though, as to  
13 how you are offering it right now. You are offering  
14 it as the types of allegations that Santanna  
15 received?

16 MS. NORINGTON-REAVES: Correct, or was aware of  
17 and may have responded to and acted upon, and I  
18 believe that is consistent with the line of  
19 questioning that I engaged the witness in, Your  
20 Honor.

21 MR. MARKOFF: One quick response, there was no  
22 foundation laid as to when anybody received this at

1 Santanna. As counsel just stated, they got this in  
2 response to requests in this litigation. So whether  
3 it was made in the regular course of business  
4 certainly hasn't been shown. Whether it was  
5 produced for litigation or perhaps even created for  
6 litigation, that has been shown. And so there is no  
7 foundation whatsoever that these records are  
8 exceptional. It is not Santanna's business, Your  
9 Honor.

10 MS. NORINGTON-REAVES: It is the record of  
11 Santanna's agent, constructed at Santanna's  
12 instruction. And regardless of that, as I have just  
13 stated, it was offered to show that Santanna was  
14 aware of certain allegations, and Mr. Gatlin has  
15 already responded as to actions taken in response to  
16 certain allegations and his awareness of the  
17 allegations.

18 JUDGE ALBERS: All right. With the  
19 understanding of the general principle that  
20 administrative hearings do not stick to the strict  
21 rules of evidence that one is accustomed to in trial  
22 court, I will admit CUB Cross Exhibit 3, also with

1       the understanding or assumption that I am not  
2       assuming that each of these complaints are taken as  
3       true and correct as they have been alleged.

4             MS. NORINGTON-REAVES: Understood, Your Honor.

5             JUDGE ALBERS: And I would trust that you are  
6       going to provide a confidential exhibit, a  
7       confidential version of this, since there are  
8       customer names in this.

9             MS. NORINGTON-REAVES: Well, if I need to  
10      redact it, I will.

11            JUDGE ALBERS: Well, just a copy and a black  
12      marker are all I am saying. It doesn't have to be  
13      anything fancy.

14            MS. NORINGTON-REAVES: I understand.

15            JUDGE ALBERS: I don't need a public version.  
16      I will just keep for my own records what I have got  
17      here. Just for purpose of getting one to the court  
18      reporter and staff.

19            MS. NORINGTON-REAVES: Okay. I will try to  
20      take care of that tonight.

21            JUDGE ALBERS: Yeah, that's fine.

22            MS. NORINGTON-REAVES: If it's not done before

1 I leave Springfield, do I just send it to you?

2 JUDGE ALBERS: That's fine.

3 MR. MARKOFF: I have hearsay and foundation  
4 objections to 4, 5 and 6, but I am presuming that  
5 there will be similar rulings to the prior e-mails.

6 MS. NORINGTON-REAVES: I beg your pardon?

7 MR. MARKOFF: I said I am presuming that there  
8 will be similar rulings to the prior e-mails. We  
9 have already gotten -- similar documents have  
10 already been admitted but I will restate my  
11 objections for the record, that there is a lack of  
12 foundation and hearsay.

13 MS. NORINGTON-REAVES: And I would just, rather  
14 than restate the same arguments --

15 JUDGE ALBERS: I understand, you would make the  
16 same arguments. That is your response.

17 MS. NORINGTON-REAVES: Correct.

18 JUDGE ALBERS: You had the same objections to  
19 all the rest of the cross?

20 MR. MARKOFF: That was 4, 5 and 6. And those  
21 were just similar to the prior ones. I have no  
22 objection to number 7.

1 JUDGE ALBERS: Regarding number 6, is there a  
2 need to redact the names of the two FOS individuals  
3 that were terminated?

4 MS. NORINGTON-REAVES: Your Honor, I will go  
5 through and redact any names, just for everybody's  
6 sake, I mean, just to make things easier. I will go  
7 through and redact names for all of the documents.

8 JUDGE ALBERS: Well, I want to make sure I know  
9 which ones we have private versions of before I  
10 admit them.

11 MS. NORINGTON-REAVES: Well, if we go through  
12 each of them, I am sure each of them would contain a  
13 name or two that would need to be taken off.  
14 Actually, CUB Cross Exhibit 4, Santanna had already  
15 redacted that.

16 JUDGE ALBERS: Right. I don't see a name.  
17 Well --

18 MS. NORINGTON-REAVES: What about the name of  
19 the marketer?

20 MR. MARKOFF: I don't see any reason --  
21 Santanna would have no objection to leaving that in.

22 JUDGE ALBERS: Do you think DNSS would have any

1 objection?

2 MS. NORINGTON-REAVES: I was going to say she  
3 might have an objection.

4 MR. MARKOFF: I don't think it's confidential  
5 information as to what account numbers are.

6 MS. NORINGTON-REAVES: As customer identities.

7 JUDGE ALBERS: All right. We will move on  
8 then. Those objections to 4, 5 and 6, hearing as  
9 they are all the same as I previously heard, I am  
10 going to move over objections.

11 Moving on to 7?

12 MR. MARKOFF: No objection to 7.

13 MS. NORINGTON-REAVES: I am sorry, 5 I need to  
14 redact. Four is going to stay the same.

15 JUDGE ALBERS: What are you redacting on 5?

16 MS. NORINGTON-REAVES: Five was a customer  
17 name. Oh --

18 JUDGE ALBERS: I thought that was a NICOR. I  
19 am sorry, no, that is a customer, isn't it?

20 MS. NORINGTON-REAVES: Right, that is a  
21 customer.

22 JUDGE ALBERS: All right. Confidential on it.

1 Moving on to 8?

2 MR. MARKOFF: Similar objections as to the  
3 other e-mails.

4 JUDGE ALBERS: All right. I am going to admit  
5 it.

6 MR. MARKOFF: Nine, similar objection and also  
7 that it is not complete. The document produced was  
8 actually three pages.

9 MS. NORINGTON-REAVES: Do you want to supply  
10 the other pages.

11 MR. MARKOFF: I am sure this was similar, so  
12 that's fine.

13 JUDGE ALBERS: Do you want the other pages?

14 MR. MARKOFF: We will let it in as is.

15 JUDGE ALBERS: Okay. Ten?

16 MR. MARKOFF: I guess I have a question. I  
17 don't know what the handwriting is. Maybe counsel  
18 can advise or not.

19 MS. NORINGTON-REAVES: It wasn't ours.

20 MR. MARKOFF: Because it wasn't produced like  
21 that.

22 MR. KAMINSKI: That's on the copy that I have.



1 MS. NORINGTON-REAVES: That's on the copy that  
2 I have, too. I am looking here at the original that  
3 I highlighted.

4 MR. MARKOFF: Okay. That's fine. That's not  
5 what I had in my -- that's fine.

6 MS. NORINGTON-REAVES: If you want to put a  
7 clean copy in without that -- I don't even know what  
8 that says.

9 JUDGE ALBERS: I can't read it. It's two  
10 words.

11 MR. MARKOFF: I can't either, but I don't know  
12 what it says so I don't know if it will get used  
13 somewhere.

14 MS. NORINGTON-REAVES: If you want to put in a  
15 clean copy --

16 JUDGE ALBERS: We will stipulate that no one  
17 can use -- that these two handwritten words in the  
18 right-hand margin are illegible?

19 MS. NORINGTON-REAVES: Yes.

20 JUDGE ALBERS: 11, same objections?

21 MR. MARKOFF: Let them in, 11 and 12.

22 JUDGE ALBERS: 14.

1 MR. MARKOFF: Same objections.

2 JUDGE ALBERS: 15.

3 MR. MARKOFF: No objections.

4 JUDGE ALBERS: 16.

5 MR. MARKOFF: No objections.

6 MS. NORINGTON-REAVES: Redact.

7 JUDGE ALBERS: Yeah. 17.

8 MR. MARKOFF: That is incomplete by five pages,  
9 so I would object on that basis. And I would ask  
10 that the remainder of that e-mail stream be  
11 included.

12 MS. NORINGTON-REAVES: Okay. I have that  
13 e-mail message. I have got it several times. It is  
14 9 through 13. Is that what you -- 9 through 14.

15 MR. MARKOFF: 14, yes.

16 MS. NORINGTON-REAVES: 9 through 14, okay. We  
17 will provide a -- I will give it to my assistant to  
18 make a copy.

19 JUDGE ALBERS: So CUB Cross Exhibit 17 is going  
20 to have added to it ICC 209 through -

21 MS. NORINGTON-REAVES: 214.

22 JUDGE ALBERS: 214. And that's simply a

1 continuation of the e-mails that were exchanged?

2 MR. MARKOFF: Yeah.

3 JUDGE ALBERS: And 18?

4 MR. MARKOFF: No objection.

5 JUDGE ALBERS: Of course, that would be a  
6 confidential version as well. And then to the  
7 extent that 17 might have some customer names in it,  
8 please let me know when you provide that, if that  
9 needs to be a do over.

10 Okay. Hearing all of the objections on  
11 this, consistent with the prior rulings, CUB Cross  
12 Exhibits 3 through 18, excluding 13 which is not  
13 offered, are admitted and there will be confidential  
14 versions of Number 3, Number 5, Number 16 and Number  
15 18.

16 (Whereupon CUB Cross  
17 Exhibits 3 through 18,  
18 excluding 13, were  
19 admitted into evidence.)

20 MS. NORINGTON-REAVES: Thank you, Your Honor.  
21 Would it be appropriate for a five-minute break  
22 before we resume?

1 JUDGE ALBERS: Well, I do have a very few -- I  
2 have a few questions myself. So perhaps we can go  
3 through those and then that way we can take a break,  
4 you can take your time for redirect if you would  
5 like, and we can go from there. Are you okay,  
6 Mr. Gatlin, for a few more minutes?

7 THE WITNESS: Yes, sir.

8 JUDGE ALBERS: Okay.

9 EXAMINATION

10 BY JUDGE ALBERS:

11 Q. Are you familiar with the requirements of  
12 Section 551.50 as they relate to a license or permit  
13 bond?

14 A. Yes, sir, I am.

15 Q. You wouldn't happen to have a copy of that code  
16 part with you, would you?

17 A. No, sir.

18 MR. HUCKMAN: Judge, I have that available, if  
19 you would like me to provide copies.

20 JUDGE ALBERS: Please do.

21 Q. When you get that, if you could turn to 551.50,  
22 the particular subsections B and C?

1 A. 551.50 B and C.

2 Q. Right. If Santanna were granted a certificate,  
3 would you be willing to commit to comply with those  
4 two subsections?

5 A. Yes, sir.

6 Q. On page 8 of your rebuttal testimony you  
7 discuss the storage requirements imposed by NICOR  
8 and People's. Could you just generally help me  
9 understand how that works?

10 A. To use as an example a Select customer, and I  
11 am going to speak in generality of volumes and  
12 sizes.

13 Q. That's fine, yes. I just want to get an idea  
14 of how it works.

15 A. To speak about a Customer Select residential  
16 customer, an average size as defined by NICOR, a  
17 customer of that magnitude might have an annual  
18 consumption rate of approximately 1360 therms per  
19 year.

20 Q. Okay.

21 A. The utility defines for each individual  
22 customer a term called "maximum contract quantity"

1 or "maximum daily contract quantity." To do that,  
2 they utilize the highest consumption month that that  
3 customer experienced in the prior year, calendar  
4 year I think is what's utilized normally. They  
5 define the Customer Select storage as volume-wise,  
6 capacity, as 32 times that MDQ.

7 Now, what that amounts to in general is  
8 about a month and a half of peak month usage. So if  
9 a customer used, for instance, maybe 20 percent of  
10 his 1360 annual usage in January and that was his  
11 peak month, then that would be, what, 270, 272  
12 therms, and approximately 1.5 times that would be  
13 the capacity of the storage container.

14 Then the Select Program requires a  
15 participant in the Select Program such as Santanna,  
16 a supplier participant, to deliver a volume in a  
17 monthly basis, if you will, but it's broken down and  
18 identified to us in a daily basis by the utility as  
19 we go along. They require us to deliver a volume  
20 equivalent to the customer's usage for that cycle,  
21 as well as sufficient volume to raise the customer's  
22 storage level from the ending storage level of the

1 prior month to the new storage level target at the  
2 end of the new month, the subsequent month.

3 So if at the end of June the existing  
4 storage level was 50 percent and the new target  
5 level -- and these are NICOR target levels; these  
6 are not Santanna target levels. The new target  
7 level at the end of July is 60 percent, then they  
8 would calculate ten percent of that storage  
9 capacity, and I think that storage capacity average  
10 on a typical customer would actually calculate out  
11 to be something in the 445 therm range, the size of  
12 the container, size of the storage, for that  
13 individual customer. So ten percent of 445, they  
14 would be looking for us to deliver an additional 45  
15 therms to go in that customer's storage that month,  
16 in addition to the customer's consumption that  
17 month.

18 Q. So is the idea that over the summer months you  
19 are building up a cushion, so to speak, of gas so in  
20 the winter it's there in case it's needed?

21 A. Well, by definition, their program -- it's not  
22 if it's needed. They have an injection season that

1 begins approximately in May and the injection season  
2 goes through the end of October. Then the  
3 withdrawal season starts in November and goes  
4 through April. And so when you get to the month of  
5 November and NICOR determines -- or let's use  
6 January since that's the peak consumption month. If  
7 they determine that the customer is going to consume  
8 the 20 percent of their 1360 therms of annual usage  
9 in that month, and again that's 272 therms of  
10 consumption that month, and their target level that  
11 month is to reduce the storage level by, like a  
12 simple example let's just say 50 percent, and the  
13 storage bank capacity size is 445 therms, then out  
14 of that 272 that the customer is going to use, 250,  
15 245 will be drawn out of storage.

16 Now, they don't pull it down to 50 percent  
17 per bite. It's smaller increments than that. But  
18 each month, November, December, January, February,  
19 March, April, they put into the calculation an  
20 incremental draw down out of storage each month, so  
21 that by the end of April the storage banks should be  
22 at approximately zero.



1 Q. That's what I was getting at. I wasn't sure if  
2 you were trying to build up or if NICOR was trying  
3 to have you build up reserve capacity. Instead,  
4 it's just building up what the customer is going to  
5 use in the winter months.

6 A. Now, they do have discretion. They don't have  
7 just a big set of target numbers. They do have  
8 discretion in adjusting those target numbers. But  
9 the norm is to try to approach zero by the end of  
10 the winter and approach it a hundred percent full by  
11 the end of the month.

12 Q. Okay, thank you. Turning to your rebuttal  
13 testimony for a moment, Attachment 1.18, that's  
14 entitled Follow-up Welcome Letter, does that sound  
15 familiar?

16 A. Start over. Where am I again?

17 Q. Exhibit 1.18 attached to your testimony.

18 A. I am sorry, I am there.

19 Q. From that document chart that Ms.  
20 Norington-Reaves handed out, it looks like this  
21 was -- it began to be used on roughly August 2 of  
22 this year. You can correct me if I am wrong about

1       that. Now, all I want to ask is, this is sent to  
2       all new customers now?

3       A. No, sir. The intent of this letter was not to  
4       send it to all new customers. At the time this  
5       letter went out, obviously things have been in a  
6       very consistent state of flux here with complaint  
7       level growing and dealing with a lot of the issues  
8       associated with certification and CUB and the AG,  
9       and the identifying the source of the complaints.  
10      This was an effort to send an additional piece of  
11      correspondence out to each customer that we judged  
12      that had been signed up into the program but had not  
13      as of yet received their first invoice. They would  
14      have received a welcome letter. In our judgment  
15      they may not have received their first invoice yet,  
16      and we just wanted to send out a strengthened  
17      document emphasizing the storage component of the  
18      program in order to just give them a little more  
19      alert to what they might be seeing whenever they  
20      received their first NICOR bill with the purchase of  
21      the storage volumes on it in addition to usage.  
22      Q. Okay.

1       A.     Thereafter, the attempt is going to be to make  
2       sure that the welcome letter itself and the contract  
3       and the sales pitch, the sales script, has  
4       sufficient descriptive terminology in it to address  
5       these issues. Having said all of that, that doesn't  
6       mean that we won't decide that we need a welcome  
7       letter and a follow-up welcome letter on a routine  
8       basis.

9       Q.     Okay. I want to refer to page 13 of your  
10      rebuttal testimony. You discuss slamming on that  
11      page, and just generally I wanted to ask you a  
12      question, kind of like the question  
13      Ms. Norington-Reaves was asking you about. In  
14      looking through some of the numerous documents that  
15      were exchanged with regard to the discovery motions,  
16      I noticed some complaints from consumers suggesting  
17      or indicating that they were asked to sign a  
18      contract without knowing it was a contract or  
19      signing some type of survey form. Just  
20      hypothetically if those were true, would that  
21      constitute slamming in your mind?

22      A.     Anybody that was enrolled without their

1 agreement to be enrolled had to be slammed.

2 Q. Okay. Can you describe Santanna's current call  
3 handling ability with regard to taking customer  
4 questions and complaints?

5 A. The current arrangement with the customer  
6 service department at the call center is that we  
7 have a call distribution system that can be manned  
8 by ten people accepting incoming calls. The call  
9 system will accept -- we have 25 phone lines going  
10 into that call system, and the call system will  
11 accept incoming calls on all 25 of those lines. Any  
12 one on line 16 through 25, I am sorry, 11 through 25  
13 would be placed in a cue waiting for the next  
14 customer service representative to become available.  
15 Anything that exceeds the capacity of the 25 phone  
16 lines would roll over into the voice mail system  
17 that we have contracted with Ameritech. And then we  
18 would have -- we have outbound lines that we have  
19 people manning those outbound lines that return any  
20 calls that are processed through that voice mail  
21 arrangement.

22 Obviously, the capabilities of the call

1 center is something that has to be viewed based on  
2 the call level that you need to process through it.  
3 We had no -- we didn't have a perception that the  
4 call volume was going to be as heavy as it turned  
5 out to be. So in the future we will obviously have  
6 to make sure that we match the customer service  
7 capabilities and the call center's capabilities to  
8 what we are going to experience from a call-in or  
9 what we anticipate from a call-in customer service  
10 demand. And I think one of the things we have  
11 certainly learned from this is that whatever you  
12 think that call level is going to be, you better  
13 assume it's going to be several multiples of that.

14 Q. From what hours do you take calls?

15 A. We take calls from 7:00 to 7:00, I believe. We  
16 have a full staff manning it from 8:00 to 5:00 and  
17 we have a lesser -- we don't have ten people on the  
18 phones from starting at 7:00 in the morning and then  
19 we go back to a lesser staff after 5:00.

20 Q. Now, is that Monday through Friday or does that  
21 include weekends as well?

22 A. That's Monday through Friday. Periodically, we

1       have had people manning the phones on the weekend,  
2       primarily to process outgoing to get back to people  
3       who had rolled over into the voice mail and have  
4       been unable to utilize the call distribution system  
5       to a customer service rep.

6       Q.     Is your number a toll free number?

7       A.     We have toll free numbers. I can't answer that  
8       question. I don't think it is a toll free number,  
9       but I really can't answer that question.

10      Q.     Okay. Now is this -- what you just described  
11      to me, is this different from the upgraded telephone  
12      system you described on page 30 of your rebuttal  
13      testimony?

14      A.     That is the --

15      Q.     That is the upgraded one?

16      A.     That is the upgraded phone system, the call  
17      distribution system.

18      Q.     Okay. Is it your intention to maintain this  
19      level, these 7:00 to 7:00 hours Monday through  
20      Friday and this number of phone lines in the  
21      foreseeable future?

22      A.     For the foreseeable future, yes, because if you

1       take a look at the schedule of customers that  
2       entered the program with Santanna and when the  
3       targeted first date of service should be and when  
4       the targeted receipt of first invoices should be --  
5       and we have found that to be -- obviously, if a  
6       customer didn't fully understand the component of  
7       storage with the program, whenever he gets that  
8       first utility bill and he sees that he is purchasing  
9       usage and he is purchasing storage gas, the  
10      magnitude is greater than he expected it to be. So  
11      that's been a catalyst of calls when that first bill  
12      is received by the customer.

13               So if we look at the schedule of when  
14      customers should receive their first bill, when we  
15      suspended the program, it's fairly apparent that we  
16      are right at the point where we should experience a  
17      very dramatic downswing in the customer service  
18      demands from the standpoint of new events occurring,  
19      not from the standpoint of the routine customer  
20      service requirements, questions answered, that sort  
21      of thing, of existing customers that are more into a  
22      steady state relationship in the program.

1       Q.    So you might scale down the number of staff you  
2       have or maybe reduce the hours that you would be  
3       taking incoming calls?

4       A.    There is no plans to do that.

5       Q.    Okay.  But I mean if you -- you indicated that  
6       you expect a lull, so to speak, in the number of  
7       questions about the first bills.  In light of that  
8       lull do you intend to at some point perhaps scale  
9       down the number of individuals who you have taking  
10      calls?

11      A.    I don't think the circumstances will wind up  
12      having us do that or, if we do, it may be that we  
13      back off to eight people during the daytime and have  
14      two people temporarily assigned to do some other  
15      task with the company.  My comment really was gauged  
16      toward that we don't have immediate plans to grow  
17      the system above the level that it is at now in  
18      anticipation of renewed participation in the program  
19      because we haven't defined the details of a plan of  
20      what that future participation is going to be.  
21      Right now we don't have any plans to go out and  
22      reach the same level or strive for the same level of



1       sign up that we did previously.

2       Q.     So right now you are not marketing to new  
3       customers, right?

4       A.     Correct. That doesn't mean that we won't  
5       double the size of that capability by the time we  
6       start the new program. We simply don't have that  
7       plan in place yet.

8       Q.     Okay. The primary methods you had used to sign  
9       up new employees was telemarketing and door-to-door  
10      and perhaps if someone called you and wanted to sign  
11      up, those are the three means in which customers  
12      were acquired, residential customers were acquired?

13      A.     Yes, sir. I don't know the number of customers  
14      that called us and signed up as far as one of those  
15      three segments, but it was a sizable number.

16      Q.     You wouldn't turn them down, though?

17      A.     No, we didn't, no. It was a sizable number of  
18      customers.

19      Q.     This was also asked by either the AG or CUB,  
20      and I am not sure this particular question, though,  
21      was asked. This area was gotten into. Can you tell  
22      me to what extent the complaints that you are aware

1 of are limited to one or more of the -- or were  
2 limited to one or more of the telemarketers or  
3 door-to-door type marketers?

4 Let me rephrase that. Of the complaints  
5 that you are aware of, did they seem to stem from  
6 particular marketing companies that you had  
7 contracted with?

8 A. I don't think that I can say that I could  
9 recognize an isolation to one. For instance, the  
10 complaints that we received associated with the fact  
11 that the customers felt that they weren't adequately  
12 educated about the storage, that would be expected  
13 to be more of a widespread event across all  
14 marketing organizations involved. There would be no  
15 reason to expect that it would be isolated or a  
16 higher percentage with one marketing organization  
17 than the other.

18 The inability of -- we obviously have lost  
19 some customers because we had the inability to  
20 receive their call in a time period in which they  
21 thought was appropriate. And their recourse for  
22 that was to terminate service. So I know of no

1 reason why something of that nature would be -- have  
2 a higher percentage with one marketer than with  
3 another.

4 Certainly, any of the events that were  
5 occurring with door-to-door organizations would be  
6 limited to just two organizations. I don't have any  
7 statistics to quote if I had to say which of those  
8 two organizations that I perceive to have  
9 experienced the most overall complaints. My  
10 perception is that it was CCI.

11 Q. Well, let me ask you about them in particular.  
12 Their name comes up quite a bit, it seems like, in  
13 the alleged complaints. Why did Santanna continue  
14 to work with CCI for several weeks or months after  
15 having gotten repeated allegations of bad behavior?

16 A. Well, in retrospect, if I could go back and  
17 start it all over again, I obviously -- and could  
18 see the future, it wouldn't have gone that long.  
19 But at the time, you are trying to get a handle on  
20 the number of complaints, nature of complaints, get  
21 some confirmation about what's going on. And  
22 normally you have a perception that if you have got

1 a problem with a marketer out there that has been  
2 poorly trained or you have just got somebody in the  
3 mix that doesn't feel like maybe honesty is one of  
4 the things that is supposed to be utilized in the  
5 pursuit of their doing their job, whatever their  
6 problem is, if you can identify a bad apple, that  
7 you can get those people out of the mix and enhance  
8 the relationship and get it on track and solve the  
9 problems.

10 So we continued to escalate the  
11 communication with the organization, continued to  
12 try to make them aware that it was becoming more and  
13 more severe in everybody's mind to include Santanna,  
14 and to the point where it finally got to where we  
15 simply said, look, if we can't get this thing on  
16 track, then we have just got to shut her down.

17 Q. Of the complaints that you are aware of, can  
18 you -- do you know what the top three reasons would  
19 have been for customers wanting to terminate their  
20 service with Santanna?

21 A. Top two?

22 Q. Top three.

1       A.    I don't have that statistic. My interpretation  
2       would be storage, not being adequately part of the  
3       education process. There has been quite a few  
4       customers, you know, a large number of customers,  
5       that have called in confused about storage. Once  
6       the storage program is explained to them, they like  
7       the storage program and they want to stay and try  
8       the program.

9               The second in my opinion would probably be  
10      the customer's inability to get through to Santanna  
11      on a timely basis.

12      Q.    The third, are you aware of what you would  
13      group as a third?

14      A.    Obviously, those people who feel like that they  
15      were enrolled in the program without their  
16      authorization. And I am just talking about a number  
17      count.

18      Q.    Yeah, that's all I am asking, just the top  
19      three. And you have offices in Hinsdale, right?

20      A.    Yes, sir.

21      Q.    Now, are those offices where customers can  
22      visit to ask questions, resolve complaints?

1       A.     They always visit -- they can call the office  
2       to resolve complaints. They have always been able  
3       to -- we have never had a closed office. But we did  
4       have two or three instances, four or five, I don't  
5       know the counts, statistics specifically, where some  
6       residential -- some homeowners showed up and  
7       conducted themselves in a totally unacceptable  
8       manner from a professional standpoint. They just  
9       came into the offices, out into the middle of the  
10      open area there in the office, and used profane  
11      language and made threats against people in the  
12      office. So at that particular point in time,  
13      regardless of what the reason was, we felt like we  
14      needed to go with a security system on the doors and  
15      not allow just open access to the offices. So we  
16      have discouraged inviting people over to the office,  
17      just for that very reason. That may change in the  
18      future, but we were just trying to get over that  
19      hurdle at the time.

20      Q.     With regards to the manner in which Santanna  
21      sells gas as far as the storage program, the storage  
22      element of your program, is that the same way you

1 sell gas to commercial and industrial customers?

2 A. Yes, it is.

3 Q. And when did Santanna start marketing to  
4 residential customers in Illinois?

5 A. The first residential program that we  
6 participated in started March 1, 2002.

7 JUDGE ALBERS: Okay. That's all the questions  
8 I have. Thank you. You have an estimate on how  
9 much time you would like to prepare for redirect?

10 MR. MARKOFF: Ten, 15 minutes maybe, maybe not  
11 even that.

12 MR. KAMINSKI: I am sorry, Your Honor. I  
13 didn't mean to interrupt but I have a question.  
14 Actually, there was a stipulation to a set of  
15 documents to be entered into the record. I don't  
16 know when you want me to do that, either at this  
17 point or later on.

18 JUDGE ALBERS: This is news to me.

19 MR. KAMINSKI: I am sorry. I was just  
20 discussing with counsel and with Staff and CUB  
21 regarding a set of discovery requests. It's the  
22 telemarketing agreements that we discussed in my

1 cross with Mr. Gatlin, and they agreed to not object  
2 to these being offered.

3 MR. MARKOFF: No objection.

4 JUDGE ALBERS: What do you want to mark them  
5 as?

6 MR. KAMINSKI: That's what I wasn't sure of.  
7 Is it a stipulated exhibit or how do you want to  
8 name it?

9 JUDGE ALBERS: Is the AG sponsoring it then?

10 MR. KAMINSKI: Yes.

11 JUDGE ALBERS: Let me look at the list of  
12 exhibits here.

13 MR. MARKOFF: Was there questioning from those?

14 MS. NORINGTON-REAVES: Not from that.

15 MR. MARKOFF: I was just going to say, you  
16 could just put them on the end of the cross.

17 MR. KAMINSKI: I understand, but it's kind of  
18 after that.

19 JUDGE ALBERS: You did raise that issue under  
20 cross examination.

21 MR. KAMINSKI: If you want to call it Cross  
22 Number 4, that is fine with me.



1 JUDGE ALBERS: Why don't we do that? Cross  
2 Number 4. Is there anything that should be kept  
3 proprietary in this?

4 MR. KAMINSKI: As far as I know, this is just  
5 the various companies that have telemarketing  
6 agreements or door-to-door agreements with Santanna.  
7 So if Santanna's counsel doesn't want to redact it,  
8 I don't have --

9 MR. MARKOFF: Having not looked at them,  
10 nothing comes to mind right now. Maybe on the break  
11 I can leaf through them. But as far as I know,  
12 there is nothing.

13 JUDGE ALBERS: Okay. Well, then the stipulated  
14 AG Cross Exhibit 4 is admitted.

15 (Whereupon AG Cross  
16 Exhibit 4 was marked for  
17 purposes of  
18 identification as of  
19 this date and admitted  
20 into evidence.)

21 MR. HUCKMAN: Judge, have we admitted  
22 Mr. Gatlin's testimony?

1 JUDGE ALBERS: No, we have not. That was  
2 subject to a motion to strike that might arise. Is  
3 there any objection to Mr. Gatlin's prepared  
4 testimony being admitted?

5 MS. NORINGTON-REAVES: I have an objection to  
6 at least one thing. Page 21.

7 JUDGE ALBERS: Okay.

8 MS. NORINGTON-REAVES: Actually, I have two.  
9 Page 21, line 464, "I don't doubt that CUB feels an  
10 enormous sense of accomplishment in dragging  
11 Santanna's name through the mud." It is not based  
12 on fact. It is speculation and inflammatory, to say  
13 the least. But just move to strike.

14 MR. MARKOFF: I think it's a statement of  
15 opinion. Whether she likes it or not, that's what  
16 he feels.

17 JUDGE ALBERS: It's not the worst thing I have  
18 seen.

19 MS. NORINGTON-REAVES: I beg your pardon?

20 JUDGE ALBERS: That's not the worst thing I  
21 have seen in testimony. I will deny the motion to  
22 strike. We can accept that it is what it is and

1       that's his opinion, even if it is not an expert  
2       opinion about mudslinging.

3               MS. NORINGTON-REAVES:   Okay.   At the risk of  
4       getting my next one rejected, I will ask to strike,  
5       if I can find the reference, it is a statement that  
6       says "which Mr. Kolata knew," and I want that  
7       stricken from the standpoint that Mr. Gatlin can't  
8       testify as to what Mr. Kolata did or did not know.  
9       Page 23, line 507, "No, again Mr. Kolata references  
10      materials no longer in use, and he knew that prior  
11      to submitting his testimony."   Mr. Gatlin has no  
12      knowledge of what Mr. Kolata knew or didn't know  
13      prior to submitting his testimony, and he can't  
14      testify as to that.   And I would move to strike that  
15      portion of his -- that statement after the comma  
16      "and he knew that prior to submitting his  
17      testimony."

18              MR. MARKOFF:   I think that those documents were  
19      disclosed prior to Mr. Kolata submitting testimony.  
20      And Mr. Kolata certainly expresses a vast number of  
21      opinions on Santanna's materials.   So presuming he  
22      is expecting to be an expert on those materials, he

1       presumably would have reviewed them. But I suppose  
2       we can take that up with Mr. Kolata.

3               JUDGE ALBERS: Well, I am going to deny that  
4       one, too.

5               MS. NORINGTON-REAVES: I beg your pardon?

6               JUDGE ALBERS: I am not going to strike that.

7               MS. NORINGTON-REAVES: Fine.

8               JUDGE ALBERS: Are there any other objections?

9               MR. KAMINSKI: No objection.

10              JUDGE ALBERS: Hearing none, then Santanna  
11       Exhibit 1 is admitted, and that is on e-docket,  
12       correct?

13              MR. MARKOFF: Yes, it is, and both the  
14       proprietary and public.

15              JUDGE ALBERS: Right, okay.

16                               (Whereupon Santanna  
17                               Exhibit 1 was admitted  
18                               into evidence.)

19              All right. We will give you some time  
20       then, Mr. Markoff, for some redirect. Go off the  
21       record now. Actually, if you have a question before  
22       we go off the record?

1 MS. NORINGTON-REAVES: I can ask it off the  
2 record.

3 JUDGE ALBERS: Okay. Off the record.

4 (Whereupon there was  
5 then had an  
6 off-the-record  
7 discussion.)

8 JUDGE ALBERS: On the record.

9 REDIRECT EXAMINATION

10 BY MR. MARKOFF:

11 Q. Mr. Gatlin, one of the counsel for the Attorney  
12 General -- and to be honest I don't remember which  
13 right now, I think it was Ms. Dale -- asked what  
14 differences Santanna -- what differences was the  
15 approach in Santanna's approach to residential  
16 marketing versus marketing to commercial industrial  
17 customers. Do you remember that line of  
18 questioning?

19 A. Yes, sir.

20 Q. Prior to undertaking the residential marketing  
21 program, did you have a chance to review the  
22 Customer Select and Choices For You tariffs?

1       A.     Yes, we did.

2       Q.     And did those -- do you recall if those tariffs  
3       had guidelines of conduct within those?

4       A.     It's my recollection that they did.

5       Q.     Also in response to the Attorney General's  
6       questions I believe you had testified that the  
7       changes in the marketing materials that were made in  
8       July, or I am sorry, that were instituted in June  
9       and then later haven't really worked all the way  
10      through, do you recall that?

11      A.     Yes, I do.

12      Q.     What did you mean by they haven't worked all  
13      the way through?

14      A.     Just simply that those marketing materials were  
15      -- the most recent modification of those marketing  
16      materials was so late in the program and then we  
17      suspended the marketing program at the end of July,  
18      so even the limited use that those most recently  
19      modified materials did get, we probably haven't seen  
20      even the effects of that yet because it simply  
21      hasn't gotten past the sign up, submit the  
22      enrollment to NICOR, NICOR defines the first date of

1       service, we deliver gas for a month, and then the  
2       customer gets the first bill. And as we talked  
3       about earlier, the first bill is one of those  
4       stimulating events in the cycle that creates a lot  
5       of communications with the customers.

6       Q.     Mr. Gatlin, if you could please turn to Exhibit  
7       1.03 to your rebuttal testimony, do you have that in  
8       front of you?

9       A.     Yes, I do.

10      Q.     And that says that's a NICOR Gas sales script,  
11      is that right?

12      A.     Yes, it does.

13      Q.     And was that the most recent sales script  
14      Santanna had for the NICOR Customer Select Program?

15      A.     I believe so.

16      Q.     And is that one of the things that you are  
17      talking about hasn't worked through yet?

18      A.     Correct.

19      Q.     So have you -- do you have any idea yet whether  
20      that will have an impact on customer understanding  
21      of Santanna's program?

22      A.     We really don't know, but the design of it was

1 to do so.

2 Q. On page 11 of your rebuttal testimony, line  
3 235, you had testified that Santanna's marketing  
4 scripts were revised also on July 9, 2002, is that  
5 right?

6 A. That's correct.

7 Q. And do you have any idea yet whether that --  
8 what the feedback is from that script as far as  
9 whether customers are better understanding the  
10 Santanna program?

11 A. Well, I don't have specific statistics.

12 Q. When would -- say a customer starts or signs up  
13 with a verifier, verbal verification, say July 10.  
14 When would that customer be expected to start  
15 getting gas from Santanna?

16 A. Well, currently we would -- the earliest that  
17 that submittal would go to NICOR, could be  
18 considered for the enrollment process, would be the  
19 day that we receive it. So if they sign up with --  
20 a customer agrees to participate in the program and  
21 we were to get a data file so showing that the  
22 following day, what was your signup date?



1 Q. Say July 10.

2 A. July 10, we get the package to NICOR on July  
3 12, NICOR gets data submittal back to us on the  
4 13th, and if that customer is accepted into the  
5 enrollment process, then they could identify a start  
6 date of 10 to 40 days from that date.

7 Q. So that would be somewhere between July 10 and  
8 -- or I am sorry, July 20 to maybe August 20?

9 A. July 23 and ...

10 Q. If a customer started --

11 A. ..August 20 or something in that range. That  
12 would be to have their first day of service.

13 Q. Okay.

14 A. And the bill obviously would come 34, 35 days  
15 thereafter, would be the first bill that the  
16 customer would receive on that service.

17 Q. So a customer that signs up, say, the day after  
18 that script was revised, wouldn't necessarily have  
19 gotten their first bill yet, is that right?

20 A. Correct.

21 Q. Is that similar also for the verification  
22 scripts for Santanna? Did you revise those about

1 the same track as the sales scripts?

2 A. I think that there has been an adjustment to  
3 the verification scripts each time there has been a  
4 verification to the sales script.

5 Q. You had testified that Santanna currently has  
6 ten -- I am sorry, you called it a call distribution  
7 center or something along those lines. What was  
8 that called?

9 A. Well, the system that we have is an ACD, an  
10 automatic call distribution unit.

11 Q. And there are ten people that man that?

12 A. That can be, correct. They can be logged into  
13 the call distribution center.

14 Q. And that was just installed the end of July,  
15 right?

16 A. Correct.

17 Q. Does that mean there are only ten people  
18 handling customer service calls?

19 A. No, there have been many more than ten people  
20 handling customer service calls at the time. Before  
21 we got the call distribution system in, at times we  
22 would have the entire product development department

1 as well as all the internal administrative people as  
2 well as the internal. We have three internal sales  
3 people in the Hinsdale office, and we have had all  
4 three of those people assisting customer service  
5 representatives, taking customer service calls.  
6 That was a time period when we simply had, you know,  
7 straight lines coming in. We didn't actually have a  
8 call distribution arrangement.

9           Thereafter, even when ten people are  
10 utilizing the call back call distribution unit, we  
11 have people dedicated to making outbound calls on  
12 the seven other lines that are not dedicated to the  
13 call distribution system. There is 25 lines  
14 dedicated to the call distribution system.

15 Q. I believe Mr. Kaminski asked you at one point  
16 if ten call center employees is extraordinary. Do  
17 you recall that question?

18 A. Repeat the question.

19 Q. Do you recall Mr. Kaminski asking you if ten  
20 call center employees was extraordinary?

21 A. Yes, I do.

22 Q. And do you recall that you answered that no?

1       A.     Correct.

2       Q.     If you could turn, please, to page 12 of the  
3       rebuttal testimony, line 266, starting at that  
4       sentence goes from line 266 through 268, the end of  
5       which -- well, that sentence reads, "This also  
6       creates an additional burden for Santanna to address  
7       customer inquiries and process cancellations which  
8       has required the use of extraordinary resources by  
9       Santanna." Do you see any reference anywhere in  
10      that testimony that talks about ten call center  
11      employees constituting extraordinary resources?

12      A.     No, sir.

13      Q.     What did you mean by extraordinary resources  
14      then?

15      A.     Well, we just -- the reference there just meant  
16      that, you know, we had to call on anything and  
17      everything that we could do to try to catch up with  
18      and deal with the escalating customer service needs  
19      that we saw with the growth of the program, not just  
20      the fact that we now have ten people manning that  
21      one system. And ten people aren't the total number  
22      of people doing customer service work, but the fact

1       that we have increased our staff probably 20,  
2       probably a third since the early part of the year,  
3       that we have progressively added, not just the  
4       system but lines. I think we started out in  
5       February with 12 lines and then went to 16. And  
6       then, you know, there has been about a three-step  
7       addition that's got us up to the 32 lines and the  
8       call distribution system. We had significant  
9       numbers of temporary staff that we brought in at  
10      times just to aid us in receiving telephone calls to  
11      not have them go into some overflow and lose those  
12      calls. The work in redesigning of the systems to  
13      deal with the cash outs of such a large number of  
14      cancellations, the resources needed. At the same  
15      time you are trying to do all of that, trying to  
16      identify complaints, process complaints, modify the  
17      system, and at the same time, of course, we have  
18      been dealing with a fairly extraordinary load of  
19      data responses and testimony and that sort of thing  
20      associated with this action and some other actions  
21      related to the residential program.

22      Q.     Do you recall Mr. Kaminski asking you some

1 questions about the time value of money?

2 A. Yes, sir.

3 Q. Do you recall him asking if Santanna earned the  
4 time value of money on the gas that goes into  
5 storage?

6 A. I do.

7 Q. Does Santanna pay for the gas it delivers to  
8 its customers?

9 A. Yes, we do.

10 Q. Does Santanna get to wait to pay for that gas  
11 until the customers use it?

12 A. No, we do not.

13 Q. Do you recall Ms. Norington going through  
14 several contracts with you and asking you to  
15 determine if those contracts listed the Santanna  
16 cash out policy of the NGI, 90 percent of the NGI  
17 index?

18 A. Yes, I do.

19 Q. And many of those contracts didn't have that  
20 provision in it, did it?

21 A. They did not.

22 Q. Has Santanna ever cashed out any residential

1 accounts at the 90 percent of the NGI provision?

2 A. No. All of the residential customers that have  
3 been cashed out have been cashed out at a hundred  
4 percent of the price they paid for the gas that was  
5 in storage.

6 Q. Mr. Gatlin, I am showing you, I believe, what  
7 has been entered as CUB Cross Exhibit Number 2.  
8 Would you take a look at that, please?

9 A. Yes, sir.

10 Q. The last paragraph on page 1 which is Bates  
11 stamped SES ICC 008, in that last paragraph do you  
12 see any reference about potential savings?

13 A. No, I do not. The paragraph talks about the  
14 fact that in a comparison of the three years ending  
15 December 2001, that the Santanna Select Program  
16 price was 25 percent less than NICOR's fully taxed  
17 gas charge in some months and averaged over 13  
18 percent less for the whole 36 months.

19 Q. That CUB Cross Exhibit 2, that doesn't mention  
20 storage anywhere, does it?

21 A. Storage?

22 Q. Yeah.

1       A.    I don't think it does.  There was a follow-up  
2       piece of correspondence to this that identifies the  
3       storage component.

4       Q.    I am sorry.  What?

5       A.    The welcome letter that went out after the  
6       utilization of this did identify the storage  
7       component.

8       Q.    Mr. Gatlin, are you aware of any instance in  
9       which a door-to-door sales person representing  
10      Santanna took a customer's bill without that  
11      customer having signed a contract?

12      A.    No, I am not aware of that happening.

13      Q.    In response to Ms. Norington's questions, I  
14      believe you had testified that Santanna did not have  
15      a \$3 administration fee at the beginning of its  
16      marketing efforts with the residential program, is  
17      that right?

18      A.    That's correct.

19      Q.    And at some point it did add that fee, though,  
20      right?

21      A.    Yes, it did.

22      Q.    When Santanna added that \$3 fee, did it



1       retroactively impose it on those that signed up  
2       before that date?

3       A.    No, that only applies to customers that enroll  
4       under that contract.

5       Q.    I am showing you what has been entered as CUB  
6       Cross Exhibit 15.  Could you take a look at the  
7       first page of that, please?

8       A.    Okay.

9       Q.    Does that mention an early termination period  
10      anywhere?

11      A.    Ask the question again.

12      Q.    Does it mention a 90-day grace period for  
13      termination anywhere?

14      A.    No, it does not.

15      Q.    Do you know, has Santanna ever imposed an early  
16      termination fee on any residential customers?

17      A.    No, we have not.

18      Q.    Even in the case of customers cancelling beyond  
19      90 days of signing up?

20      A.    We have not applied that early termination fee  
21      to any residential customer, regardless of whether  
22      they terminated before or after the 90 days.

1 Q. For door-to-door sales did Santanna have  
2 scripts for those sales?

3 A. Yes, they did.

4 Q. Were they any different than the telemarketing  
5 scripts?

6 A. I don't think they had any difference.

7 Q. Did door-to-door -- withdraw that. Residential  
8 gas users that signed up with Santanna with the  
9 door-to-door sales person, notwithstanding the  
10 written contract, did they also get a welcome  
11 letter?

12 A. Yes, they did, mailed to them, in the same  
13 manner as telemarketing clients.

14 Q. Mr. Gatlin, I am handing you what's been  
15 entered as CUB Cross Exhibit 16. Hand you also CUB  
16 Cross Exhibit 15. I will look over your shoulder a  
17 minute since I don't have a copy. You had -- I  
18 believe there was a comparison Ms. Norington was  
19 going into between the contracts that comprise  
20 Exhibit 16 and roughly that they were similar to  
21 page 3 of Exhibit 15. Do you recall that?

22 A. Yes.

1 Q. Would you turn to page 3 of Exhibit 15, please?

2 A. That's ICC 003?

3 Q. It is. On ICC 003 could you please read me the  
4 second to the last sentence in the first paragraph?

5 A. "There will be an administrative charge of \$3  
6 per month." Is that the one?

7 Q. It is. Does that provision exist in the  
8 contract in CUB Cross Exhibit 16?

9 A. No, it does not.

10 Q. Do you know if Santanna produced in this case  
11 any form contracts that are in the form of the  
12 contract shown on CUB Cross Exhibit 16?

13 A. Do I know whether Santanna produced that form?

14 Q. Yes.

15 A. Without verification, I couldn't say I know  
16 that we did.

17 Q. Did you make inquiry at Santanna to come up  
18 with all of the contracts that have been used in the  
19 residential program?

20 A. Yes, I did.

21 Q. And did you get a response from employees at  
22 Santanna?

1 A. Yes, I did.

2 Q. And did you forward those on for disclosure to  
3 the other parties in this proceeding?

4 A. Yes, we did.

5 Q. Do you see any other differences between the  
6 contracts in Exhibit 16 and the contract on page 3  
7 of Exhibit 15?

8 A. The revision dates are different on the bottom  
9 of the pages.

10 Q. Anything else that you see?

11 A. The remainder of the contract appears to be  
12 identical.

13 Q. All right. Let me ask you to look, please, at  
14 page 2 of CUB Cross Exhibit 16. Do you see the  
15 section there entitled Customer Awareness in the  
16 middle?

17 A. I do.

18 Q. Do you know if Santanna ever drafted such a  
19 thing?

20 A. I am not aware that we drafted a contract with  
21 that customer awareness section in it, period.

22 Q. Mr. Gatlin, I am showing what you has been

1 entered as CUB Cross Exhibit Number 18. Could you  
2 please turn to page 2 of that?

3 A. Yes, sir.

4 Q. Do you recall that you testified that it  
5 doesn't appear that there is a signature on that  
6 contract?

7 A. I testified that there is no signature on the  
8 authorized signature line.

9 Q. Okay. And you also testified, however, that  
10 there is a meter and an account number, is that  
11 right?

12 A. Yes.

13 Q. Do you know of any way to get somebody's  
14 account number without getting it directly from the  
15 customer?

16 A. I am not aware of any way that you can get it.

17 Q. Mr. Gatlin, directing your attention to page 13  
18 of your rebuttal testimony, did you testify that  
19 Santanna customers fabricate slamming complaints?

20 A. I testified that I wasn't sure if they had just  
21 forgotten that they had chosen to participate in the  
22 Santanna program or if they just wanted out of the

1       program and they thought that they could get out by  
2       fabricating a slamming complaint. But certainly  
3       Santanna doesn't participate in slamming. We don't  
4       condone slamming.

5               MR. MARKOFF: Ask for guidance. What shall I  
6       mark this exhibit?

7               JUDGE ALBERS: What do you have? Is it tape, a  
8       cross exhibit, what?

9               MR. MARKOFF: It is a tape but I am going to  
10      start out with the CUB complaint form.

11              JUDGE ALBERS: I suppose Santanna Redirect  
12      Exhibit 1.

13                               (Whereupon Santanna  
14                               Redirect Exhibit 1 was  
15                               marked for purposes of  
16                               identification as of  
17                               this date.)

18      Q.     Mr. Gatlin, I am handing you what has been  
19      marked for identification as Santanna Exhibit 1. Do  
20      you know what that is?

21      A.     It's a CUB Customer Inquiry.

22      Q.     Does it appear to be a complaint form?

1       A.    Yeah, the form is --

2       Q.    Does it appear to be a complaint form for CUB?

3       A.    Yes, it does.  It appears to be a form that CUB  
4       uses to document a complaint, in this case, T and L  
5       last name initial K.

6       Q.    Again, I would ask for a little guidance.  I  
7       would like to play a verification tape.  Obviously,  
8       however, I don't know if that would be on the record  
9       or we could just reference it.  I have transcripts  
10      that could be used.

11           JUDGE ALBERS:  Well, why don't we hear the tape  
12      and then you can offer those afterwards, assuming  
13      that they are what the tape purports to -- what the  
14      tape recording is.

15           MR. MARKOFF:  The tape is identified.  I just  
16      don't have multiple copies of it.  So I will hand  
17      these out so people can decipher the notes.

18           JUDGE ALBERS:  Off the record.

19                   (Whereupon there was  
20                   then had an  
21                   off-the-record  
22                   discussion.)

1 JUDGE ALBERS: Back on the record.

2 Q. Mr. Gatlin, at the bottom of that CUB Consumer  
3 Inquiry, Santanna Redirect Exhibit 1, next to  
4 Summary, could you read me that first line, please?

5 A. Yes, sir. It says, "Customer states that she  
6 never wanted Santanna."

7 Q. Now, as you have testified in this matter and  
8 also as you are being crossed, Santanna conducts  
9 verbal verifications of telemarketing sign-ups, is  
10 that right?

11 A. Part of the telemarketing process is that there  
12 is a verbal verification performed with the  
13 customer.

14 MR. MARKOFF: I would like to play a tape for  
15 you, if I could, if you could listen along.

16 (Whereupon an audio tape  
17 was played by Mr.  
18 Markoff.)

19 JUDGE ALBERS: Okay. Before we go any further,  
20 can everyone agree that what we have here on paper  
21 is what we just heard?

22 MS. NORINGTON-REAVES: After he says -- I think



1       it's after "I show the last digit of your social  
2       security number," right before the telemarketer  
3       says, "All right. You are now enrolling," it  
4       sounded to me like the tape cut. He seemed like he  
5       was about to say something else and it sounded like  
6       a cut. Mr. Kaminski just passed me a note saying  
7       the same thing. Can we play that portion again?

8               MR. MARKOFF: Sure.

9                       (Whereupon the audio

10                      tape was played again by

11                      Mr. Markoff.)

12               MS. NORINGTON-REAVES: I heard "a" and a click  
13       and then it went right into "All right. Now you are  
14       now enrolling." To the extent that this is an  
15       accurate transcription of that tape, yes.

16               MR. KAMINSKI: I will agree to that.

17               MR. MARKOFF: Mr. Gatlin, did that sound like a  
18       verification tape for Santanna?

19               THE WITNESS: Yes, it did.

20               JUDGE ALBERS: Wait a minute. To the extent  
21       that we can agree that what we heard and that it is  
22       everybody's opinion of what we heard, that this

1 document reflects that.

2 MS. NORINGTON-REAVES: Yeah, except for the  
3 fact that the guy said, "Okay. And it is now 8:0, I  
4 am sorry" and "8:0, I am sorry" is not on this page.  
5 But absent that, yes, I accept that this is a --

6 JUDGE ALBERS: All I want to do is whether we  
7 can have this marked as Santanna Redirect Exhibit 2  
8 just so we have what we just heard in the record in  
9 some form. That's my only purpose in raising this.  
10 Does Santanna have any objection to that?

11 MR. MARKOFF: No.

12 JUDGE ALBERS: Since I am commandeering your  
13 exhibit here. I think we will mark this as a  
14 confidential exhibit given the customer's identity,  
15 as well as the Redirect Exhibit 1 since that also  
16 identifies the customer.

17 (Whereupon Santanna  
18 Redirect Exhibit 2 was  
19 marked for purposes of  
20 identification as of  
21 this date.)

22 MR. HUCKMAN: Judge, will that be marked a

1 confidential exhibit or are we redacting the  
2 exhibit? I am sorry, I didn't hear.

3 JUDGE ALBERS: Well, as far as the first one,  
4 number one, we will need -- there will be a redacted  
5 public version.

6 MS. NORINGTON-REAVES: There already is,  
7 depending on when this was produced. There is  
8 already a public version that's part of the record.

9 MR. HUCKMAN: Oh, I am sorry, I understand, my  
10 apology.

11 MR. MARKOFF: I'll be happy to redact it. I  
12 didn't know what we would be doing on redirect, of  
13 course.

14 MS. NORINGTON-REAVES: Paul, if I were you, I  
15 would just double check and search through the PDF  
16 files that are already on e-docket because it may  
17 already be on there in redacted form. If it's on  
18 e-docket already, it is on there in redacted form.

19 JUDGE ALBERS: Yeah, I assume in response to  
20 some motion you are referring to?

21 MS. NORINGTON-REAVES: Probably, or otherwise  
22 it is attached to Dave's testimony. From looking at

1       it off the top of my head, I can't tell you which of  
2       the four batches it would be in. It is either in  
3       three or four, given the date on it.

4               JUDGE ALBERS: It is something that is already  
5       in the record.

6               MS. NORINGTON-REAVES: Yeah, it is already  
7       entered.

8               MR. MARKOFF:

9       Q.     Mr. Gatlin, did that sound like a verification  
10      tape for Santanna?

11      A.     Yes, it did.

12      Q.     And can you tell me under the Customer Select  
13      Program is one of the authorized verification  
14      procedures to get a telephone number with the last  
15      four digits of the social security number?

16      A.     Yes, it is.

17      Q.     Did Mr. K give the telemarketer, the verifier,  
18      that information?

19      A.     Yes, he did. He confirmed that that  
20      information had been given to the marketing  
21      representative.

22      Q.     And is there any indication from that that

1 Mr. K did not intend to sign up with Santanna?

2 A. It sounded to me like Mr. K agreed that he  
3 wanted to participate in the program.

4 Q. And is that contrary to what is shown on  
5 Santanna Redirect Exhibit 1?

6 A. Customer states that she never wanted Santanna.  
7 It appears to contradict what's written on the  
8 contract.

9 Q. Do you have any idea why somebody would have  
10 made that complaint with CUB?

11 A. I surely don't. If a customer had -- if they  
12 felt like they didn't receive sufficient information  
13 about the storage program, part of the program is  
14 that they have 90 days or 60 days from first date of  
15 service which may be about the same thing. All they  
16 had to do was state that they wanted out of the  
17 program and they would have been cancelled out of  
18 the program.

19 MR. MARKOFF: Nothing further.

20 JUDGE ALBERS: Recross, Staff?

21 MR. HUCKMAN: Yes.

22

1 RE CROSS EXAMINATION

2 BY MR. HUCKMAN:

3 Q. Just one brief question relating to CUB Cross  
4 Examination Exhibit 2. Do you still have a copy of  
5 that available?

6 A. That's the transcript, I mean, the subscript?

7 Q. Yes, this is the telemarketing script that's  
8 marked 2/13/02, and I understand from today's  
9 testimony that this was in effect until  
10 approximately June 17, is that correct?

11 A. According to the --

12 MS. NORINGTON-REAVES: You talking about CUB  
13 Cross Exhibit 2?

14 MR. HUCKMAN: Yes.

15 Q. Does that sound approximately right subject to  
16 check?

17 MS. NORINGTON-REAVES: I have an extra copy if  
18 he needs to see it.

19 THE WITNESS: Yes, I do.

20 Q. Why don't I present you with both the cross  
21 exhibit and also Cross Exhibit, is it, 3?

22 A. I found mine then.

1 Q. Okay. Do you have a copy of both each of these  
2 so-called chart and this Cross Exhibit 2, this  
3 script?

4 A. Yes, I do. That's ICC 008?

5 Q. That's correct. And as I understand it, this  
6 is the -- I am sorry, this is the telemarketing  
7 script that was in effect until June 17 of this  
8 year?

9 A. According to this chart, yes.

10 Q. And you will recall from our discussions today  
11 that there were some questions raised as to whether  
12 this fully disclosed terms and conditions of service  
13 and also that you had testified that since this time  
14 for several other scripts you have taken essentially  
15 what I might characterize as remedial action to  
16 improve the scripts and more fully disclose terms  
17 and conditions of service, is that a fair  
18 characterization?

19 A. I think so.

20 Q. Of Santanna's current customers, what  
21 percentage would you say were signed up with  
22 marketing materials that were used prior to June 17,

1       during this phase where the questions about terms  
2       and conditions are greater than they might be  
3       presently -- I am sorry, current residential  
4       customers? An approximate figure would be fine.

5       A.     I would think a large percentage of the --  
6       prior to which date? What was your cutoff date  
7       again?

8       Q.     June 17, which was when this first CUB Cross  
9       Exhibit 2 script ceased to be used. Would it be 75  
10      percent plus?

11      A.     Of the current customers who have -- I just  
12      don't know what that number is. I mean, I could say  
13      that might be a close number but I could be --

14             JUDGE ALBERS: If you don't know, just say so.

15             THE WITNESS: I don't know.

16      Q.     But you did say it was a large share a moment  
17      ago, correct? If you don't know the exact figure,  
18      it is certainly a large significant share of  
19      customers, your residential customers?

20      A.     Yes, I think that that's a fair generalization.  
21      I just don't know what the number is.

22      Q.     Okay. Well, I will accept that, I guess, for



1       the time being. But it's a fair statement that the  
2       company has taken considerable remedial action in  
3       the marketing materials it provides to customers  
4       now, that the majority of residential customers that  
5       the -- that a large share, a significant number of  
6       the customers who are signed up with the company  
7       were signed up with these marketing materials used  
8       prior to June 17 and that may be problematic, as we  
9       have discussed in this proceeding?

10      A.    Maybe problematic what?

11      Q.    As we have discussed -- may have the problems  
12      that have been the subject of this proceeding?

13      A.    That they weren't as educational as would have  
14      been beneficial in reducing the confusion that some  
15      of the customers encountered?

16      Q.    Yes.

17      A.    Is that primarily what you are talking about?

18      Q.    Yes. A lot of your customers were signed up  
19      under materials that were confusing?

20      A.    I think that's -- again, a generalization  
21      because I don't know what the specific numbers are,  
22      but yes.

1 MR. HUCKMAN: Thank you.

2 JUDGE ALBERS: Is that all?

3 MR. HUCKMAN: That's all.

4 MS. NORINGTON-REAVES: Nothing.

5 MR. KAMINSKI: Nothing.

6 JUDGE ALBERS: Okay. Then I have nothing. You  
7 are done, sir.

8 (Witness excused.)

9 MS. NORINGTON-REAVES: Can we go off the record  
10 for a moment?

11 JUDGE ALBERS: Off the record.

12 (Whereupon there was  
13 then had an  
14 off-the-record  
15 discussion.)

16 JUDGE ALBERS: On the record. And before that,  
17 though, Mr. Markoff, you --

18 MR. MARKOFF: Oh, I am sorry, I wanted to move  
19 for the admission of Santanna Redirect Exhibits 1  
20 and 2.

21 JUDGE ALBERS: Any objection?

22 MS. NORINGTON-REAVES: No.

1 JUDGE ALBERS: Hearing none, then redirect  
2 exhibits are both admitted.

3 (Whereupon Santanna  
4 Redirect Exhibits 1 and  
5 2 were admitted into  
6 evidence.)

7 And, Ms. Norington-Reaves, the floor is  
8 yours.

9 **DAVID KOLATA**

10 called as a Witness on behalf of the Citizens  
11 Utility Board, having been first duly sworn, was  
12 examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MS. NORINGTON-REAVES:

15 Q. Please state your name for the record.

16 A. David Kolata, K-O-L-A-T-A.

17 Q. And are you the same David Kolata that provided  
18 testimony and prefiled testimony in this matter?

19 A. Yes, I am.

20 Q. And is that testimony labeled as Direct  
21 Testimony of David Kolata, CUB Exhibit 1,  
22 Proprietary and Public Version, and also

1 Supplemental Testimony of David Kolata which I  
2 assume is CUB Exhibit 2?

3 JUDGE ALBERS: Yes, it is.

4 Q. David Kolata, CUB Exhibit 2.0, which is also a  
5 proprietary and a public version with attachments?

6 A. Yes.

7 Q. And do you have a copy of the testimony in  
8 front of you?

9 A. I have a copy of the public versions of both.

10 Q. Okay.

11 A. Redacted.

12 Q. Would you like a copy of the proprietary  
13 versions of both?

14 A. Sure, why not.

15 Q. Okay. Looking through those documents, is that  
16 a true and correct version of the testimony that you  
17 submitted in this case?

18 A. It is. I would like to make a few small -- it  
19 is.

20 Q. Do you have any changes that you would like to  
21 make to that?

22 A. Yes, I have a few small changes here.

1 Q. Can you identify those, please, with page and  
2 line number?

3 A. Sure. Going off the redacted version which I  
4 made the corrections on, page 2, Question 4, please  
5 describe your educational background.

6 Q. Yes.

7 A. The last sentence, I am completing a Ph.D. at  
8 Vanderbilt and scheduled to do my dissertation in  
9 December 2002, it should be changed to on November  
10 22, 2002. Since the time I filed my testimony, it's  
11 been moved.

12 Q. Okay. Any other changes?

13 A. Yes. I believe -- let me just check real  
14 quick, but I believe that's it for my direct  
15 testimony. Yes, that's it for my direct testimony.

16 The supplemental testimony there is a few  
17 more. On page 3 of the supplemental, the second  
18 question that starts at about line 17 and I realize  
19 that it might be a little different with the  
20 proprietary version. The question is, "Please  
21 describe how Santanna engages in fraudulent  
22 verification procedures." In that first sentence I

1 say after the clause, "Santanna provided audio  
2 cassette tapes containing of customer verifications"  
3 and "containing" should be taken out. It is just,  
4 "Santanna provided customer audio cassette tapes of  
5 customer verifications."

6 Then on page 4, "Please describe the  
7 verification for Mrs. E." In the first mention of  
8 her name -- I am going through a redacted version  
9 here so I believe it's line 6 -- there is a typo in  
10 the spelling of the name. It shouldn't be -- there  
11 shouldn't be a "W," there should be a "V."

12 Q. Any other changes or corrections?

13 A. I believe there is one more. No, that's  
14 actually -- let me check. No, that is it. That is  
15 it.

16 Q. Okay. So with these corrections, then what you  
17 have is a true and correct version of your  
18 testimony?

19 A. Yes.

20 Q. Okay. And if I were to ask you the questions  
21 contained in both your supplemental and direct  
22 testimony here today, would your answers be the

1 same?

2 A. Yes, it would.

3 MS. NORINGTON-REAVES: With that, I pass the  
4 witness.

5 JUDGE ALBERS: Given that you have made some  
6 corrections to them, why don't we mark these CUB  
7 Exhibits 1.0 Revised and CUB Exhibit 2.0 Revised.

8 MS. NORINGTON-REAVES: And I will get you a  
9 corrected hard version?

10 JUDGE ALBERS: Yeah, please, hard version,  
11 public and proprietary. And rather than asking if  
12 there is any objections to the admission, I will  
13 turn things over to Mr. Markoff. I assume at this  
14 point you were offering for cross?

15 MS. NORINGTON-REAVES: Yes, I am. I did not  
16 move yet because I know that that's coming. So if  
17 someone could please remind me when this is all over  
18 to move for the admission of his testimony, I would  
19 greatly appreciate it.

20 MR. MARKOFF: You were nice enough to do it for  
21 me and I will agree.

22

1 CROSS EXAMINATION

2 BY MR. MARKOFF:

3 Q. Good evening, Mr. Kolata.

4 A. Good evening.

5 Q. No promises but I will get through this as  
6 quickly as possible. Do you consider yourself to be  
7 an expert witness in this matter?

8 A. Yes, I do.

9 Q. And on what topics do you consider yourself to  
10 be an expert?

11 A. Well, in particular in this case --

12 MS. NORINGTON-REAVES: On what topics?  
13 Relevant to this matter or what topics generally?

14 JUDGE ALBERS: Why don't we leave it as what  
15 topics are relevant to this matter, just so we can  
16 make the list shorter and save some time.

17 A. Yeah, I think in reviewing the record I think  
18 there is two, really three, fundamental questions.  
19 One would involve customer education. I certainly  
20 consider myself an expert in customer education.

21 Another would involve essentially ethics,  
22 if you break it right down, and that would be the



1       slamming concerns. And I definitely consider myself  
2       an expert in ethics. That's actually my  
3       concentration in graduate school.

4               And then I think there is the legislative  
5       intent question about whether or not Santanna is in  
6       compliance with the alternative gas supplier law.  
7       And having been intimately involved in the  
8       negotiations that led to the current alternative gas  
9       supplier law and helped draft the amendment to the  
10      alternative gas supplier law, House Bill 4667, that  
11      was just signed by the Governor yesterday, I would  
12      consider myself an expert in that as well. So I  
13      believe that would be my answer.

14      Q.    I am to assume then that you don't consider  
15      yourself an expert in management practices?

16      A.    No, I wouldn't. No, meaning that I wouldn't  
17      agree with that assumption.

18      Q.    Oh. Then do you consider yourself an expert in  
19      management practices?

20      A.    To the extent that they relate to customer  
21      education, to the extent that they relate to the  
22      slamming complaints, to the extent that they relate

1 to compliance with the alternative gas supplier law,  
2 absolutely.

3 Q. Could you tell me a little bit about your  
4 educational background, please? I know that you  
5 have referenced that you are in grad school, but  
6 could you go to the time before that, please?

7 A. Sure.

8 Q. I am sorry. Why don't I do this? Why don't I  
9 give you what is Kolata Cross Exhibit 1?

10 MS. NORINGTON-REAVES: I am sorry, just for  
11 point of clarification, you are asking him to go  
12 back and detail his educational experience prior to  
13 graduate school?

14 MR. MARKOFF: All I said was he referenced  
15 graduate school in his testimony, and I just wanted  
16 him to go back a little bit.

17 JUDGE ALBERS: This is the one called Santanna  
18 Cross Exhibit 1. We'll call this Santanna Cross  
19 Exhibit 1, just so we are consistent.

20 MR. MARKOFF: Yeah.

21 (Whereupon Santanna  
22 Cross Exhibit 1 was

1                   marked for purposes of  
2                   identification as of  
3                   this date.)

4           THE WITNESS:   So can you repeat the question?

5       Q.    Yeah.   Can you just give me a recap of your  
6       educational background, please?

7       A.    I have a Bachelors of Arts Degree in Government  
8       from the University of Notre Dame.   I have a Master  
9       of Arts Degree in Political Science from the  
10      University of Toronto.   And I am finishing up my  
11      Ph.D. in Political Science at Vanderbilt University.

12      Q.    During any of that did you take classes on  
13      customer education?

14      A.    No.

15      Q.    During any of that did you ever take classes on  
16      legislative intent?

17      A.    Yes.

18      Q.    And what such classes?

19      A.    Countless, dealing with the legislative  
20      process.   That's a main focus of -- political  
21      science is divided into four subfields, one of which  
22      is American politics.   Almost every course in

1 American politics deals with legislative intent.

2 Q. And you had referenced that your focus in grad  
3 school in your Ph.D. program, wouldn't you say that,  
4 is ethics?

5 A. Well, in general that's correct.

6 Q. Is it government ethics?

7 A. It is moral and political philosophy, really  
8 the ethics of various political policies.

9 Q. And what training do you have that you would  
10 consider yourself an expert in customer education?

11 A. For example, I sit on the board of the consumer  
12 education working group which helped design customer  
13 education materials in preparation for the opening  
14 of the electric market in May of this year. I also  
15 serve on the board of -- forgive me for forgetting  
16 the exact name, but it's the Illinois Telephone  
17 Consumer Education Fund which similarly is a group  
18 where we design customer education materials, in  
19 this case for the telephone industry. This is a  
20 case where we had commercials on TV. It was a  
21 pretty broad-based campaign.

22 Q. I am sorry. That was the --

1 A. Telephone Consumer Education Fund.

2 Q. And you do what? You are on the board there as  
3 well?

4 A. Yes, I am on the -- I can't remember if it is  
5 technically called a board. I believe it is. But I  
6 am on the group that designs and approves and  
7 recommends, I believe in this case to the  
8 Commission, a campaign.

9 Q. And how long have you been with the Telephone  
10 Consumer Education Fund?

11 A. I believe since soon after I started with CUB  
12 which would have been about July of last year.

13 Q. 2001?

14 A. Yes.

15 Q. And how about the customer education working  
16 group? How long have you been on the board there?

17 A. A similar amount of time.

18 Q. Since you have joined CUB?

19 A. Yeah, essentially.

20 Q. Are these effectively in your representative  
21 capacity for CUB?

22 A. Yes.

1 Q. Are you -- would you consider yourself CUB's  
2 government relations specialist?

3 A. I am one of them.

4 Q. And what have you -- if you could tell me in  
5 detail a little bit, what have you done with either  
6 of those two groups that would provide you with  
7 expertise in customer education?

8 A. To start with the consumer education working  
9 group, the challenge there was very difficult. You  
10 had residential -- the residential market opening up  
11 for competition, you know, for the first time ever.  
12 And it was a really difficult process and how we get  
13 across these difficult concepts involved in  
14 residential choice. So we had a lot of discussions,  
15 a fair number of meetings, that I participated in  
16 where we were editing drafts of customer brochures  
17 and comments on media action plans. So I think  
18 clearly that has provided me -- I have shown my  
19 experience and have had quite a bit of experience  
20 involved in that process.

21 Q. How many people are involved in that group?

22 A. I couldn't give you an exact number. I believe

1       it's about six or seven.

2       Q.    As part of that, have you drafted consumer  
3       education materials?

4       A.    Yes.

5       Q.    And you have said this opened in May of 2000 --  
6       May of this year, right?

7       A.    That was when -- the campaign was in  
8       preparation for the May of 2002 opening of the  
9       residential market. I believe the campaign started  
10      in earlier than that, February or March.

11      Q.    Have you ever published anything in the area of  
12      customer education?

13      A.    No, I have not.

14      Q.    Have you ever done -- other than working with  
15      these groups, have you ever done any independent  
16      research on customer education?

17      A.    Yes, I have.

18      Q.    And what would that be?

19      A.    In my general capacity as senior policy analyst  
20      at the Citizens Utility Board, I am responsible for  
21      recommending policies and legislation and what not.  
22      You know, because of that I have done extensive

1 research on appropriate consumer education  
2 techniques.

3 Q. What do you consider appropriate consumer  
4 education techniques in relation to the alternative  
5 gas supplier law?

6 A. In the most basic formulation, consumer  
7 education materials that give consumers a thorough  
8 understanding of what it is they are purchasing or  
9 what it is that they offer, that the alternative gas  
10 supplier is making.

11 Q. Have you ever testified before as an expert?

12 A. Yes, I have.

13 Q. And once, more than once or just once?

14 A. Just once.

15 Q. In what proceeding?

16 A. It was the Part 732 case, and forgive me for  
17 forgetting the number right now. It is in here. I  
18 will get it to you in a second. It was Docket  
19 Number 01-0485.

20 Q. And on what topic or topics did you testify as  
21 an expert?

22 A. The general issues involved in that case were,



1       you know, pertained to billing statements, data  
2       collection and customer education of the customer  
3       credits established by the rewrite of the  
4       Telecommunications Act, House Bill 2900.

5       Q.    Do have any experience in marketing?

6       A.    Yes.

7       Q.    And what is that experience?

8       A.    I would suggest that my experience involved in  
9       these boards that I serve on, for example, serves as  
10      marketing experience.  If you mean have I worked for  
11      an advertising agency, no, I have not.

12      Q.    Have you ever managed a business of any sort?

13      A.    I have not.

14      Q.    Do you have any management experience at all?

15      A.    Yes.

16      Q.    What is that?

17      A.    I have managed interns in both my job at the  
18      Citizens Utility Board and at the Environmental Law  
19      and Policy Center.  I also had some limited  
20      managerial responsibilities at Vanderbilt as a  
21      teaching assistant.

22      Q.    Do you have any experience in complaint

1 investigation?

2 A. Yes.

3 Q. And what is that?

4 A. We get customer complaints at CUB, as you know,  
5 and I have been involved in researching the veracity  
6 of those complaints, of checking into the various  
7 issues. So I would consider that to be experience  
8 in that area.

9 Q. Are you a lawyer?

10 A. I am not.

11 Q. Do you have any legal training?

12 A. Can you define legal training?

13 Q. Have you ever gone to law school?

14 A. I have not. I have taken classes in  
15 constitutional law.

16 Q. As part of your government thing?

17 A. As part of my graduate school training.

18 Q. I am sorry, which version are you using?

19 A. Right now I actually have the proprietary, so.

20 Q. Directing your attention to page 5 of your  
21 original testimony.

22 A. Uh-huh.

1 Q. Lines 14 through 17, you testified that and  
2 this is in relation to Santanna's marketing  
3 information materials. You testified that, "This  
4 practice inevitably leads to much higher summer  
5 bills than customers are accustomed to receiving.  
6 But not one of the customers with whom CUB has  
7 spoken was informed prior to taking service from  
8 Santanna that they would be billed in this manner."  
9 Is that your testimony?

10 A. It is.

11 Q. And that refers to the way Santanna manages its  
12 storage component of its program?

13 A. I believe so.

14 Q. And you didn't speak with all of those  
15 customers, did you?

16 A. I did not personally speak with all of those  
17 customers.

18 Q. Did you speak with any of those customers?

19 A. I have spoken to some customers. Whether or  
20 not this sentence refers to those customers, I could  
21 not say.

22 Q. To what does this sentence refer?

1       A.    It refers to the complaints in the record so  
2       far.

3       Q.    So you don't know if you spoke to any of the  
4       customers in the complaints in the record so far?

5       A.    I should correct that.  I have spoken to some  
6       customers in the record so far.

7       Q.    When did you speak with those customers?

8       A.    I was involved in some discussions in the last  
9       few weeks.

10      Q.    In the last few weeks?

11      A.    Yes.

12      Q.    Does that relate to affidavits that have been  
13      recently produced?

14      A.    Yes, I believe in part it does.

15      Q.    Do you know how many affidavits have been  
16      submitted by CUB in this proceeding?

17      A.    It's my understanding that so far we have --

18            MS. NORINGTON-REAVES:  Point of clarification,  
19      submitted for the record?  Submitted to you?

20      Q.    Disclosed.

21      A.    So far -- it is my understanding so far we have  
22      only disclosed four.

1 MS. NORINGTON-REAVES: Could we go off the  
2 record for a minute?

3 JUDGE ALBERS: Okay. Off the record.

4 (Whereupon there was  
5 then had an  
6 off-the-record  
7 discussion.)

8 JUDGE ALBERS: Back on the record.

9 MR. MARKOFF:

10 Q. Did you speak with any of those customers prior  
11 to the time that you submitted your testimony in  
12 this proceeding?

13 A. I don't believe I did.

14 Q. So you are just basing your statement then that  
15 not one of the customers with whom CUB has spoken  
16 was informed prior to taking service from Santanna  
17 that they would be billed in this manner by what was  
18 related to you by others within CUB?

19 A. Yes, that's a fair characterization.

20 Q. And do you know when those customers signed up  
21 with Santanna?

22 A. All of them?

1 Q. Time range?

2 A. I couldn't give you a time range without  
3 looking through the specific complaints. We have  
4 received complaints throughout the program, so.

5 Q. Do you know when the last complaint was  
6 received?

7 A. The last complaint on the record or the last  
8 complaint you received?

9 Q. The last complaint that has been disclosed to  
10 other parties in this proceeding.

11 A. It would have been pretty much the day that  
12 they were submitted, and I can't remember that date  
13 right offhand, although I am sure that we can find  
14 it.

15 Q. Do you know when any of those customers that  
16 you reference here started service with Santanna?

17 A. Again, not without looking specifically at the  
18 complaints.

19 Q. Prior to submitting your testimony in this  
20 proceeding on August 9, did you verify the veracity  
21 of any of the complaints that were submitted to CUB?

22 A. Define what you mean by "veracity."

1 Q. Truth.

2 A. You mean absolute truth?

3 Q. Can you tell me if there is a gray area in  
4 truth?

5 A. Well, it depends on how you mean it.

6 Q. I mean truth. Do you know the difference  
7 between true and false?

8 A. Sure, but there is difference senses of true  
9 and false. What I would say is, do I know to  
10 absolutely certainty that all of these complaints  
11 are true, no, I do not. Is there a pattern both  
12 reflected in the over 700 complaints that we have  
13 received to this date, the over 360 complaints I  
14 believe the AG has received, the over 360 complaints  
15 that the Illinois Commerce Commission has received,  
16 and by looking at the CD-ROM last night there were  
17 2,000 complaints at least that Santanna has  
18 received, is there a pattern that suggests  
19 disturbing and -- disturbing possibilities or  
20 disturbing allegations, I would say there is that  
21 pattern.

22 Q. Have you verified the veracity or the truth of

1 any of those complaints?

2 A. Well, for example, in the case of the  
3 affidavits, you know, I was involved in discussions  
4 with people, several who said, for example, I did  
5 not sign that contract. I talked to them. I  
6 reviewed verification tapes, and it was pretty clear  
7 that in some cases they didn't want service with  
8 Santanna. So I would say that I have established  
9 the absolute truth of some of those complaints, just  
10 not all of them.

11 Q. Who did you establish absolute truth with?

12 A. For example, Mrs. E that you mentioned in your  
13 testimony as well.

14 Q. Any others?

15 A. What I would say is that we have -- there is a  
16 strong reason to believe that the people who signed  
17 affidavits are telling the truth, especially when  
18 you put it in the context of all of the complaints  
19 that the parties to this proceeding have received.

20 Q. Have you verified the veracity of any other  
21 complaints other than Mrs. E?

22 A. Again, it depends what you mean by -- if you



1 are asking me can I say to any particular complaint,  
2 other than the affidavits, other than a few of the  
3 verification tapes -- and mind you this is just a  
4 small sample, this is not all of the complaints that  
5 are out there -- but if you ask me if I know with  
6 absolute certainty that complaints beyond that  
7 relative sample are certainly true, no, I can't say  
8 that. I think there is all probability that they  
9 are true, though.

10 Q. What is the sample that you are basing that on?

11 A. The sample, for example, of the contracts that  
12 we requested and the customer verification tapes we  
13 requested. That would be two.

14 Q. Isn't it true that CUB's standard practice is  
15 to take complaints and then pass them onto the  
16 appropriate utility?

17 A. I believe that is correct.

18 Q. And is that a role as a mediator or an advocate  
19 for the consumer?

20 A. Yeah, I think that's a fair characterization.

21 Q. And is it -- is the role simply to take the  
22 complaint and pass it along or is there any

1 investigation in the standard practice of those  
2 complaints?

3 A. Well, you know, certainly we pass on, you know,  
4 some complaints and we try to make sure that they  
5 are handled appropriately. In those cases where a  
6 disturbing pattern appears, we obviously get  
7 involved in investigating them and, if need be, we  
8 file a complaint with the Commission.

9 Q. This disturbing pattern that you have  
10 referenced a couple of times, this is a disturbing  
11 pattern of allegations, right?

12 A. Yes.

13 (Whereupon Santanna  
14 Cross Exhibit 2 was  
15 marked for purposes of  
16 identification as of  
17 this date.)

18 Q. I am handing you what's been marked for  
19 identification as Santanna Cross Exhibit 2. Are  
20 those part of CUB's responses to data requests in  
21 this proceeding?

22 A. I believe so, yes.

1 Q. Is it true that nothing in the data responses  
2 for 13 and 14 mention investigating the truth of the  
3 complaints?

4 MS. NORINGTON-REAVES: I am going to object  
5 that, in just the same way earlier you wanted to use  
6 the complete responses, there were supplemental  
7 responses to Number 14. And so to the extent that  
8 he has been asked to look at this and respond with  
9 respect to verification procedures, I think he  
10 should have the benefit of the entire response  
11 because the entire response is also -- the  
12 supplement is a part of the entire response.

13 THE WITNESS: If you will give me a moment to  
14 look at Exhibit 1.

15 MR. MARKOFF: Santanna Cross Exhibit 1 also  
16 includes the supplemental data responses, so Ms.  
17 Norington is correct. You are welcome to review it.

18 THE WITNESS: Let me just take a quick moment  
19 here.

20 JUDGE ALBERS: Does that satisfy your concerns?

21 MS. NORINGTON-REAVES: Yes, thank you.

22 THE WITNESS: Okay. Can you repeat your

1 question?

2 Q. Yeah. Isn't it true that there is nothing in  
3 those responses that mentions the investigation of  
4 the truth of the complaints?

5 A. Absolutely not.

6 Q. Could you point me to the part that discusses  
7 that?

8 A. In all honesty, it seems like all of our  
9 supplemental response to 14 seems to get at that  
10 very issue. The entire description to me seems  
11 like, at least in my opinion, a description of  
12 verifying the truth.

13 Q. Could you point me to which part or parts?

14 A. Well, for example, "Given the extremely short  
15 time frame of this proceeding, in an effort to  
16 investigate and verify the numerous slamming  
17 allegations, CUB sought to obtain affidavits from  
18 consumers regarding the statements contained in  
19 their complaints." It has the word "investigate"  
20 and "verify" in that sentence.

21 Q. Was that investigation and verification  
22 conducted prior to the time you submitted your

1 original testimony in this proceeding? I think you  
2 just testified that it wasn't, is that right?

3 A. It was CUB's or mine?

4 Q. Yours.

5 A. Before my testimony was submitted, other than  
6 talking to other CUB employees, I did not  
7 personally, other than looking at patterns that had  
8 developed among the allegations, I did not  
9 personally try to verify whether or not they were  
10 absolutely true. As for other CUB employees, I  
11 believe they did.

12 Q. Who did that?

13 A. I believe as just a partial list, Sandra  
14 Marcelin, our director of customer care, I forget  
15 her exact title; Martin Nava and Sarah Moskowitz who  
16 are also in the Department. I believe you could add  
17 Jim Chilsen to that list as well. And I believe  
18 Ms. Norington sitting over at the table.

19 Q. Do you know what any of them did specifically  
20 to investigate the complaints?

21 A. I believe this is a fair -- it is my  
22 understanding this is a fair characterization of

1       what they did.

2       Q.     What is?

3       A.     The response here in Question 14 is a fair  
4       characterization of the general procedure that CUB  
5       goes about in investigating complaints.

6       Q.     Does that response state when the investigation  
7       was conducted?

8       A.     Giving it just a cursory read, it doesn't  
9       appear to.

10      Q.     Do you know if it was conducted prior to the  
11      time you submitted your testimony on August 9?

12      A.     I believe part of it. I can't say for sure.

13      Q.     What do you base that belief?

14      A.     Having spoken to people around the office.

15      Q.     As of today how many complaints have you  
16      investigated?

17      A.     All of them.

18      Q.     How did you go about that?

19      A.     I looked through all of the complaints quite  
20      extensively, for example.

21      Q.     And so reviewing the complaints you consider to  
22      be an investigation?

1       A.    In part.  I think that's part when you notice a  
2       disturbing pattern.  I think that's where things  
3       start.

4       Q.    Have you spoken with Mrs. E?

5       A.    I have not.

6       Q.    With which customers submitting complaints  
7       about Santanna to CUB have you spoken?

8       A.    To the best of my recollection I was involved  
9       in discussions with Mrs. K.

10      Q.    Can I ask you to write down that name for me,  
11      please?

12           MS. NORINGTON-REAVES:  Do you just want to go  
13      off the record and say the name?

14           JUDGE ALBERS:  All right.  Off the record.

15                           (Whereupon there was  
16                           then had an  
17                           off-the-record  
18                           discussion.)

19           JUDGE ALBERS:  Back on the record.  Just for  
20      the record purposes, Mrs. K is the previously  
21      identified -- the one and only.

22           MR. MARKOFF:

1 Q. So you have spoken with Mrs. K?

2 A. If I could say that, yes.

3 Q. And you have spoken with other complainants?

4 A. Yes.

5 Q. Do you recall any of those names?

6 A. I do not.

7 Q. Do you know when you spoke with, including Mrs.  
8 K, with any of the complainants?

9 A. I personally spoke to them within the last, I  
10 would say, two to three weeks.

11 Q. Was it prior to or subsequent to the submission  
12 of your testimony on August 9?

13 A. I would say it was pretty close to that date.  
14 I couldn't tell you for sure whether it was prior or  
15 after.

16 MR. MARKOFF: Could we go off the record for  
17 just a minute, please?

18 JUDGE ALBERS: Okay. Off the record.

19 (Whereupon there was  
20 then had an  
21 off-the-record  
22 discussion.)



1                   (Whereupon Santanna  
2                   Cross Exhibit 3 was  
3                   marked for purposes of  
4                   identification as of  
5                   this date.)

6       Q.     Mr. Kolata, showing you what has been marked  
7             for identification as Santanna Cross Exhibit Number  
8       3.     Do you recognize this type of form?

9       A.     Yes.

10    Q.     What is it?

11    A.     It's a CUB Consumer Inquiry form.

12    Q.     And there is a customer's name listed there,  
13             right?

14    A.     There is.

15    Q.     Is it all right if we refer to her as LB?

16    A.     Sure.

17            MS. NORINGTON-REAVES:   Just for the record,  
18             this is the same LB we referred to earlier.

19            MR. HUCKMAN:   And for the record, this is not  
20             my colleague Linda Buell.

21                   (Laughter)

22    Q.     Could you read Ms. LB's complaint there,

1 please?

2 A. Sure. "Caller says that someone came to their  
3 door representing themselves as a NICOR employee.  
4 She says she was told she was due a refund. She  
5 just had to sign a form. Much to her surprise, her  
6 next bill shows Santanna as her supplier. She is  
7 very upset. This not only happened to her, but to  
8 many others in her neighbor," which I assume is a  
9 typo for neighborhood. "She said she attempted to  
10 contact Santanna to get out of the contract. She  
11 says she was solicited on 6/25/02 or 6/26/02."

12 (Whereupon Santanna  
13 Cross Exhibit 4 was  
14 marked for purposes of  
15 identification as of  
16 this date.)

17 Q. Show you what's been marked for identification  
18 as Santanna Cross Exhibit 4. That appears to be an  
19 affidavit from Ms. LB, is that right?

20 A. Yes.

21 Q. And do you know if it's one of the affidavits  
22 that you were referencing earlier?

1 A. Yes.

2 Q. And attached to that -- actually, this is  
3 multiple, sorry.

4 MS. NORINGTON-REAVES: I gave them all to you  
5 in one packet.

6 MR. MARKOFF: Let me withdraw a couple of  
7 those. You want this back?

8 MS. NORINGTON-REAVES: Sorry.

9 Q. In that affidavit -- there is a document  
10 attached to the affidavit, is that right?

11 A. There is.

12 Q. And is that a Santanna contract that is  
13 attached?

14 A. It is a Santanna contract.

15 Q. And this affidavit from Ms. LB states at  
16 paragraph 4, does it not, it says, "I have never  
17 signed an agreement with Santanna Energy Services"?

18 A. Yes, it does.

19 Q. Do you believe that to be true?

20 A. Yes, I do.

21 Q. On what do you base that?

22 A. Well, I think the starting point is where

1 Santanna starts, based on your internal e-mails.

2 That when you receive a number of allegations  
3 alleging the same sort of thing, that it's probably  
4 true. And then you investigate further. And, for  
5 example, I have reviewed many of your contracts that  
6 you introduced in the record, I believe it's 1  
7 through 5, SES ICC 1 through 5, and reviewed the  
8 contracts that you turned over. And while I can't  
9 speak to this particular contract, I can say that it  
10 doesn't appear that all of the Santanna contracts  
11 that you say were in use, that there are additional  
12 contracts. So being that, I think, raises a lot of  
13 questions about the nature of these contracts.

14 MR. MARKOFF: Okay. I move to strike as  
15 non-responsive.

16 JUDGE ALBERS: Ms. Norington, you are his  
17 lawyer.

18 MS. NORINGTON-REAVES: Quite frankly, I am just  
19 kind of stunned. I thought he answered the  
20 question. He asked what the basis -- can you repeat  
21 the question that he asked?

22 Well, I believe he asked if he believed this

1 line here and then what was the basis of that  
2 belief, is that the question? I mean, I think he  
3 answered the question. I don't understand how it  
4 was non-responsive.

5 THE WITNESS: I would like to add, too --

6 MS. NORINGTON-REAVES: Wait, wait, we need to  
7 resolve this.

8 (Whereupon the requested  
9 portion was then read  
10 back by the Reporter.)

11 JUDGE ALBERS: I think you started out on the  
12 right track there as far as being responsive but  
13 then wandered a little bit, to put it bluntly. At  
14 this point I am not quite sure. Without having to  
15 hear it all again, I am not quite sure what you  
16 said.

17 THE WITNESS: If you ask the question again, I  
18 can --

19 MR. MARKOFF: I will ask the question again,  
20 but I have a pending motion to strike.

21 JUDGE ALBERS: Would you be satisfied with my  
22 giving that prior remark the appropriate weight and

1           letting you ask the question again?

2           MR. MARKOFF:   Sure.

3           JUDGE ALBERS:   Okay.   At this hour of the  
4           evening.

5           MR. MARKOFF:   I will rephrase it.

6           Q.    On what do you base your belief that Ms. LB's  
7           statement as follows, quote, I have never signed an  
8           agreement with Santanna Energy Services, end quote,  
9           on what do you base your belief that that's true?

10          A.    Very simply the existence of the affidavit  
11          itself, the disturbing pattern that emerges in the  
12          over 2,000 complaints entered in or that have been  
13          involved in this proceeding, and the questions  
14          raised about Santanna contracts.

15          Q.    Will you agree that the signature on the  
16          affidavit is the same as the signature on the  
17          attached document?

18          MS. NORINGTON-REAVES:   Point of clarification,  
19          are you asking that as a lay person or as an expert?

20          MR. MARKOFF:   I will ask it as a lay person.

21          A.    It doesn't look to be exactly the same  
22          signature, no.

1 Q. What the -- do you think it's the same  
2 signature?

3 A. In my opinion, no.

4 Q. Withdraw that. Do you think that the same  
5 person that signed the affidavit also signed that  
6 contract?

7 A. No.

8 Q. And given those signatures, why is it you  
9 believe that?

10 A. Again, I gave you the -- I stated the reasons  
11 why I generally believe it, and it doesn't look to  
12 me like it's the exact same signature.

13 MR. MARKOFF: I am going to show you -- I will  
14 mark it as an exhibit. This is just the original of  
15 that same copy.

16 MS. NORINGTON-REAVES: I have looked at it,  
17 thank you.

18 JUDGE ALBERS: Can I have a look at that? Do  
19 you have those other two marked as anything, though?

20 MR. MARKOFF:

21 Q. This is pretty much the original of what  
22 appears to be Ms. LB's contract. Do you see any

1 difference in that versus the copy that's attached  
2 to the affidavit?

3 A. Based on a quick review, assuming that this is  
4 in fact the original, it appears to be the same.

5 Q. And you maintain your view that the signature  
6 on the contract is different than the signature on  
7 the affidavit?

8 A. What I said is the signature isn't exactly the  
9 same, that in my opinion it doesn't appear to be the  
10 same signature. When you add to that questions  
11 about the nature of Santanna contracts, I think it  
12 raises a level of reasonable doubt. You also have  
13 an affidavit from Mrs. B saying that in fact she  
14 didn't sign such a document.

15 (Whereupon Santanna  
16 Cross Exhibit 5 was  
17 marked for purposes of  
18 identification as of  
19 this date.)

20 Q. Showing you what has been marked for  
21 identification as Santanna Cross Exhibit 5, and for  
22 the others in the room this is the affidavit of



1 T.... C....

2 JUDGE ALBERS: Mr. TC.

3 MR. MARKOFF: Yes.

4 MS. NORINGTON-REAVES: I'm sorry. Question,  
5 what has this been marked as? Is it or is it not  
6 marked? LB Customer Inquiry Form.

7 MR. KAMINSKI: I think it's 3.

8 MS. NORINGTON-REAVES: Okay. Thank you.

9 JUDGE ALBERS: What was supposed to be 5?

10 THE WITNESS: Just the affidavit?

11 MR. MARKOFF: TC, the affidavit with the  
12 contract.

13 Q. Mr. Kolata, have you had a chance to review  
14 Exhibit 5?

15 A. Just give me a second here.

16 (Pause)

17 Okay.

18 Q. Do you see in paragraph 5 where the affiant  
19 states, "I did not sign the attached document which  
20 appears to be a natural gas agreement with Santanna,  
21 period"?

22 A. Yes, I see it.

1 Q. Do you have any belief as to whether that  
2 statement is true?

3 A. In my opinion it is true.

4 Q. And on what basis?

5 A. Again, the existence of the affidavit, the  
6 pattern, and all the complaints in the record, and  
7 the questions that have been raised about the  
8 Santanna contracts.

9 Q. Can I ask you to compare the signature on the  
10 affidavit to the signature on the attached contract?

11 A. Okay.

12 Q. Do you believe that those are signed by the  
13 same person?

14 A. I would say that the signatures are not exactly  
15 the same. They are similar. Given the affidavit of  
16 T.... C...., who said that he signed a petition, I  
17 think it's plausible that that is TC's signature. I  
18 can't say for sure.

19 Q. I am not going to mark it as an exhibit but  
20 this is the original of the contract. Can you tell  
21 me if that appears to be -- if the copy of the  
22 contract attached to TC's affidavit appears to be

1 the same as that original?

2 A. Assuming that this is the original, it appears  
3 to be the same.

4 Q. You maintain your belief after seeing that,  
5 that TC that signed the affidavit is not the same TC  
6 that signed the contract?

7 A. I don't think that was what was my belief. Can  
8 you restate that?

9 Q. Sure. I will ask you, do you believe that the  
10 TC that signed that affidavit is the same TC that  
11 signed the contract?

12 A. I believe that it is plausible that on that  
13 contract that you have there, that is TC's  
14 signature. As to the question of whether or not TC  
15 signed that contract, I think there is still a lot  
16 of questions, a lot of concerns.

17 Q. Could you read that answer back to me, please?

18 (Whereupon the requested  
19 portion was then read  
20 back by the Reporter.)

21 Mr. Kolata, directing your attention to  
22 page 6 of your original testimony.

1           A.     Just a second.

2                   MR. MARKOFF:   Before I go forward with that, I  
3     move for admission of Santanna Cross Exhibits 1  
4     through 5.

5                   JUDGE ALBERS:   Any objection?   Hearing none,  
6     then Santanna Cross Exhibits 1 through 5 are  
7     admitted, both a public and proprietary version of  
8     Exhibits 3, 4 and 5.

9                   And I will just note at this point that if  
10    anyone who is preparing a proprietary version of an  
11    exhibit could, when they are blacking out the  
12    customer name, just leave the first letters of the  
13    name so we can have a reference as to who that would  
14    be, so.   Thank you.

15                               (Whereupon Santanna  
16                               Cross Exhibits 1, 2, 3,  
17                               4 and 5 were admitted  
18                               into evidence.)

19           Q.     Mr. Kolata, on page 6 of your testimony.

20           A.     Uh-huh.

21           Q.     Line 2.

22           A.     Yep.

1 Q. You analogized Santanna's current situation to  
2 that of Ameritech last year. Do you recall that  
3 testimony?

4 A. Ameritech in 2000.

5 Q. My apologies. With that correction, is that a  
6 correct statement?

7 A. I draw that comparison.

8 Q. You testified that Ameritech acknowledged,  
9 quote, acknowledged it had severe service quality  
10 problems, end quote, is that correct?

11 A. That is correct.

12 Q. How do you know that?

13 A. Well, for starters, in, I believe, September or  
14 October of that year the head of Ameritech, Ed  
15 Whitaker, came to a rather historic meeting where  
16 all commissioners from Ameritech states were in  
17 Chicago. At that time Mr. Whitaker said he was  
18 embarrassed for the service quality problems that  
19 his company had caused. He publicly apologized and  
20 he said they were going to do essentially everything  
21 in their power to rectify the situation. So I don't  
22 think there is any question that Ameritech

1       acknowledged that there were severe service quality  
2       problems.

3       Q.     Were you present at that statement?

4       A.     I was not present at that statement.  I have  
5       read numerous newspaper articles that quote  
6       Whitaker, and it was pretty close to that.

7       Q.     Now, the testimony that is referenced there  
8       talks about complaints at CUB, is that right?

9       A.     Yes, I believe that that is only complaints at  
10      CUB.

11      Q.     That predated your time with CUB, though,  
12      didn't it?

13      A.     August 2000?

14      Q.     Yes.

15      A.     Yes.

16      Q.     What equates Ameritech's alleged problems with  
17      Santanna's alleged problems?

18      A.     The number.  Ameritech -- the number and the  
19      time frame.  We are talking about similar time  
20      periods here, May to August.  In the case of  
21      Ameritech it was May to August of 2000.  In the case  
22      of Santanna it was May to August of 2002.  During

1       that time period for Ameritech in 2000 we received  
2       789 complaints. So far in the time period about  
3       Santanna in 2002 we have received over 700  
4       complaints. Given the fact that Ameritech serves  
5       roughly a hundred times more customers than  
6       Santanna, that just shows the enormity of the  
7       problems the company has.

8       Q.    So, basically, the analogy is simply volume?

9       A.    It is volume over a comparable time period.

10      Q.    Of the 789 complaints about Ameritech received  
11      at CUB, do you know what proportion of the total  
12      complaints that reflects? Withdrawn.

13            Of the 789 complaints received at CUB about  
14      Ameritech, do you know what percentage of total  
15      customers impacted by Ameritech's service problems  
16      that represents?

17      A.    I still don't understand your question. Are  
18      you asking -- well, repeat it.

19      Q.    How many -- do you know how many customers of  
20      Ameritech were impacted by Ameritech's service  
21      problems?

22      A.    Do I know exactly?

1 Q. Yeah.

2 A. No. Do I know it was a serious if the CEO of  
3 the company had to come in and apologize in front of  
4 five commissions, yes.

5 Q. Were you present at any of those?

6 MS. NORINGTON-REAVES: Objection, asked and  
7 answered. He already asked.

8 MR. MARKOFF: Actually, it was about a meeting  
9 before.

10 MS. NORINGTON-REAVES: And it was the same  
11 meeting. He is talking about the meeting of the  
12 five commissions. Asked and answered.

13 Q. Do you know as a result of Ameritech service  
14 problems if they lost their license to conduct  
15 business?

16 A. They do not -- they did not lose their license  
17 to conduct business. They did have to face serious  
18 consequences.

19 Q. In fact, they still offer residential  
20 telecommunication service, is that right?

21 A. Yes, they do.

22 Q. You went on later in that testimony to state



1       that --

2       A.     What page?

3       Q.     That same paragraph, in fact.

4       A.     Okay.

5       Q.     That because more than -- I will paraphrase  
6       here and correct me if I mischaracterize your  
7       testimony.

8       A.     Sure.

9       Q.     Because more than 7,000 of 12,500 plus  
10      customers cancelled after receiving gas from  
11      Santanna, this obviously means that once they  
12      learned the true terms of service, the customers  
13      cancelled. Does that accurately characterize your  
14      testimony?

15      A.     Yes.

16      Q.     Have you spoken with those 7,000 customers?

17      A.     I have not personally spoken to them. I have  
18      reviewed almost all of the over 2,000 complaints  
19      introduced into the record that shows that pattern.

20      Q.     And do you know in relation to when they  
21      cancelled whether it was before or after they  
22      supposedly learned the true terms of service?

1 A. Can you repeat the question?

2 Q. Do you know in relation to when these customers  
3 cancelled, do you know whether those cancellations  
4 were before or after they allegedly learned the true  
5 terms of service?

6 A. I would assume -- if what you are saying is if  
7 in all -- do I know in all 7,000 cases that in all  
8 7,000 cases that the exact explanation for them is  
9 that once they learned the true terms of service,  
10 the customers cancelled, I cannot say that.

11 Q. It is possible that those customers gave an  
12 oral verification and cancelled the next day?

13 A. It is possible that there are other reasons for  
14 the cancellation, for example, slamming.

15 Q. Any other possible reasons or are those the  
16 only two?

17 A. Well, given the pattern established, I think,  
18 in the record, I would agree with Mr. Gatlin that  
19 the top three reasons for complaints and people  
20 quitting were didn't understand the terms of  
21 service, that couldn't get -- not necessarily in  
22 this order -- couldn't contact Santanna to talk

1       about questions about their bill and the service,  
2       and slamming. I would think -- and there is  
3       obviously more reasons than that, but those would be  
4       the top three.

5       Q.     But isn't that different than stating that  
6       obviously once they learned the true terms of  
7       service, the customers cancelled?

8       A.     If what you are saying is that -- I think the  
9       confusion lies with "the customers," implying all  
10      7,000. I think that, you know, I would say that  
11      once -- that obviously all of the customers  
12      cancelled because once they learned the true terms  
13      of service, that's the only reason, I couldn't say  
14      that.

15      Q.     You have some background in conducting opinion  
16      polls, don't you?

17      A.     I have some, yes.

18      Q.     Have you polled those 7,000 customers to  
19      investigate why they cancelled before ever receiving  
20      gas from Santanna?

21      A.     I wouldn't say formally polled. I would say  
22      that --

1 Q. Have you informally polled those 7,000?

2 A. Well, to the extent that we, of all of the  
3 complaints that we had, we took a sample of them and  
4 we asked for contracts and verification tapes. So  
5 in a way that's a sample of the total numbers of  
6 complaints.

7 Q. And so Santanna disclosed to you contracts and  
8 verification tapes, is that right?

9 A. Yes.

10 Q. Okay. And from that, how does that relate to  
11 your statement that obviously once they learned the  
12 true terms of service, the customers cancelled?

13 A. You asked me whether or not I had conducted an  
14 informal poll.

15 Q. The question pending right now, how does the  
16 receipt of contracts and verification tapes from  
17 Santanna obviously support your statement that  
18 obviously once they learned the true --

19 A. The record shows the pattern that a large  
20 number of customers didn't understand the terms of  
21 service and therefore cancelled, that a large number  
22 of customers couldn't get through to Santanna to

1 talk about billing questions and what not, and that  
2 a large number of customers alleged that they were  
3 slammed. And obviously the record is what we use to  
4 establish that pattern.

5 Q. Not being able to get through to Santanna is  
6 different than not knowing the true terms of  
7 service, right?

8 A. They are not exactly the same thing. I would  
9 say that they are -- there is some relation.  
10 Obviously, if you can't get through to the company  
11 to talk about the terms of service, it is difficult  
12 to know what the terms of service are.

13 Q. How do these customers find out about the true  
14 terms of service?

15 MS. NORINGTON-REAVES: Objection. Calls for  
16 speculation. He can't tell you how customers find  
17 out anything. I don't think you have laid a proper  
18 foundation for his knowledge basis to what these  
19 customers ascertain.

20 MR. MARKOFF: In fact, that's exactly my point.  
21 But he has testified that all of these customers,  
22 once they learned the true terms of service, the

1 customers cancelled. I would be happy to not pursue  
2 this line of questioning if the testimony is  
3 stricken or withdrawn.

4 MS. NORINGTON-REAVES: What testimony? The  
5 last line?

6 MR. MARKOFF: The whole opinion is based on --

7 MS. NORINGTON-REAVES: No, there is one line  
8 that you have been taking issue with for the past  
9 few moments. If there is a specific comment as to  
10 that line, that's fine. But to ask him to withdraw  
11 his entire section of testimony, that entire  
12 portion, I think is excessive.

13 JUDGE ALBERS: I am going to overrule the  
14 objection but I understand the point you are trying  
15 to make. So if you want to try to make that point,  
16 go ahead.

17 Q. Is it possible that a customer speaking to a  
18 telemarketer just agrees to sign up with Santanna to  
19 get rid of the telemarketer?

20 MS. NORINGTON-REAVES: Objection, calls for  
21 speculation.

22 MR. MARKOFF: I am just asking if it's

1 possible.

2 JUDGE ALBERS: He can answer that.

3 THE WITNESS: Can you repeat the question?

4 Q. Is it possible that a customer speaking to a  
5 telemarketer might just agree to sign up just for  
6 the sake of getting the telemarketer off the phone  
7 with the intent that they would cancel later?

8 A. That's possible.

9 Q. Is it possible that a customer that signed up  
10 with a telemarketer or verifier might have just  
11 changed their mind and then cancelled?

12 A. That's possible.

13 Q. It is in fact possible, of course, that once a  
14 customer receives the welcome letter from Santanna  
15 with the terms and conditions, they might have  
16 cancelled as well, right?

17 A. That's possible.

18 Q. The truth is you don't have any personal  
19 knowledge of why these 7,000 people cancelled, do  
20 you?

21 A. That's not true.

22 Q. What is your personal knowledge about why these

1       7,000 people cancelled?

2       A.    I have reviewed the over 2,000 complaints on  
3       the record in this case.  They show a pattern, a  
4       very disturbing pattern, that customers weren't  
5       informed of the terms of service, that they were  
6       slammed, that they couldn't get through to Santanna.

7       Q.    You have spoken with those customers?

8            MS. NORINGTON-REAVES:  Asked and answered at  
9       least three times.

10          MR. MARKOFF:  I keep getting a different answer  
11       from him.  The witness acknowledges not speaking  
12       with them but then he says it is not true that he  
13       doesn't have personal knowledge.

14          MS. NORINGTON-REAVES:  Well, and he stated his  
15       personal knowledge is based on his review of  
16       complaints.  I think we should move on.  You have  
17       asked the same question three times.

18          JUDGE ALBERS:  Sustained.

19       Q.    Do you know how many complaints CUB received  
20       about Santanna in 2001?

21       A.    In 2001 before it started serving residential  
22       customers?



1 Q. Yes, it would be related to  
2 commercial/industrial.

3 A. I do not.

4 Q. On page 6 of your testimony you quote from  
5 Docket 02-0425.

6 A. I do.

7 Q. And I believe your quote is, "Santanna  
8 acknowledges, given the volume of complaints, that  
9 customers apparently were confused about the exact  
10 parameters of Santanna's service, most notably that  
11 Santanna would charge them for stored gas." Is that  
12 accurate?

13 A. I believe that is accurate, yes.

14 Q. Do you know if that is a full quote from that  
15 docket?

16 A. What do you mean by a full quote. I mean, it  
17 is obviously not the whole document.

18 Q. Do you know if that's even the full sentence  
19 that's quoted?

20 A. Off hand I couldn't tell you.

21 Q. Did you read that document first?

22 A. Yes, sure, absolutely.

1 Q. Could you tell me from that, even from that  
2 quote, can you tell me where Santanna acknowledges  
3 that it caused customer confusion?

4 A. Repeat the question.

5 Q. Can you tell me from that quote where it says  
6 that Santanna acknowledges that it caused customer  
7 confusion?

8 A. The quote says Santanna acknowledges customers  
9 apparently were confused about the exact parameters  
10 of Santanna's service, most notably that Santanna  
11 would charge them for stored gas. That seems to be  
12 an acknowledgment that customers were confused.

13 Q. Page 7 of your testimony.

14 A. Yes.

15 Q. Thereabouts, you went into some general  
16 background on the purpose of storage, is that right?

17 A. Sure, I did.

18 Q. And you testified that price spikes often but  
19 not always occur in the winter when demand is  
20 greater, is that right?

21 MS. NORINGTON-REAVES: Can you give me a line  
22 number, please?

1 MR. MARKOFF: Yeah, I am sorry, line 14.

2 A. Yes, I believe that is correct.

3 Q. You see the italicized part that says "but not  
4 always"?

5 A. But not always, yeah.

6 Q. Can you tell me when that did not occur?

7 A. It is my understanding, for example, that it  
8 didn't occur in 2000.

9 Q. And what do you base that understanding on?

10 A. Well, for one, the PGA filings that NICOR  
11 makes. I believe it shows that in January, February  
12 and March of 2000 prices were lower than they were  
13 in the summer of 2000.

14 Q. And do you know if Santanna buys their gas from  
15 PGA?

16 A. No, Santanna -- PGA is an arrangement with  
17 NICOR. You would not.

18 Q. And do you know then if that price trend that  
19 you just referenced would have any impact at all on  
20 Santanna?

21 A. Well, I do know as a general rule the PGA tends  
22 to track various market indexes. So to that extent,

1           it would have an effect.

2           Q.     Page 8 of your testimony, line 3.

3           A.     Yep.

4           Q.     You testified that, quote, none of the Santanna  
5           marketing materials, contracts and welcome letters  
6           filed to date, however, does an adequate job of  
7           describing the prices and terms of the hedging  
8           service the company provides. Is that an accurate  
9           quote?

10          A.     That is an accurate quote.

11          Q.     What did you mean by filed to date?

12          A.     I think I simply meant what's in the record.

13          Q.     Have you reviewed Santanna's document  
14           disclosure in this proceeding, the documents  
15           disclosed to CUB, prior to filing your testimony?

16          A.     Yes.

17          Q.     And, in fact, included as Appendix 4 to your  
18           testimony is the welcome letter used by Santanna in  
19           July, is that right?

20          A.     I have to check through this binder but -

21                   MS. NORINGTON-REAVES: There is an index in the  
22           front.

1       A.    Is there?  Okay.  It's, you say, Appendix 4 to  
2       my testimony?

3       Q.    Appendix 4.

4       A.    Okay.  I found it.  Can you repeat the  
5       question?

6       Q.    Do you know when that welcome letter was in use  
7       by Santanna?

8       A.    Without cross referencing it to the chart, no,  
9       I do not.

10      Q.    Will you agree that what you have there as  
11      Appendix 4 adequately discloses Santanna's storage  
12      program?

13      A.    No, I would not.

14      Q.    And what is it you think is missing?

15      A.    Well, I think for starters there is a  
16      mischaracterization going on here.  Santanna makes  
17      it seem like the storage component itself of its  
18      program is unique, that it is the only one providing  
19      storage, when in fact all utilities and alternative  
20      suppliers provide the benefit of suppliers.  The  
21      unique part of Santanna's program, unique to this  
22      point at least, is the prepay feature.  So in my

1       opinion I don't think this adequately gets across  
2       the nature of Santanna's storage program.

3       Q.    You quoted in your testimony -- I am sorry, you  
4       testified on line 8 --

5       A.    What page?

6       Q.    This is page 8, line 8.

7       A.    All right, line 8.

8       Q.    The sentence before that, really.  "The company  
9       needs to offer its customers and perspective  
10      customers much more detail and explanation of its  
11      claim that Santanna offers a unique storage program  
12      that is beneficial to its customers," is that right?

13      A.    Yeah.

14      Q.    Santanna actually does offer more than just  
15      that explanation, don't they?

16      A.    Do they offer more than just that sentence?

17      Q.    Yeah.

18      A.    They offer more than just that sentence.

19      Q.    And they, in fact, offer more detailed an  
20      explanation, is that right?

21      A.    They offer -- there is some more detail.  There  
22      is some more explanation.  I don't believe it rises

1 to the level of being adequate.

2 Q. What is missing in your mind?

3 A. Again, what is missing is an accurate and  
4 thorough description of the prepay feature which is  
5 in fact the unique feature at this point to the  
6 Santanna program. I think it's clear from the over  
7 2000 complaints that the customers were taken --  
8 there was a little bit of sticker shot going on when  
9 they got their first bill. And I think they really  
10 need to be told that we are asking you to prepay for  
11 storage. Your bills in the summer months are going  
12 to go up based on the average customer by this  
13 amount. Historically, following this strategy, it  
14 would produce this kind of benefits, if any, in the  
15 winter. There just needs to be much more  
16 explanation of the offers, so the customers can make  
17 an informed and rational choice.

18 Q. Do you know -- if the complaints that you have  
19 reviewed thus far, do you know if those people have  
20 reviewed or have received this welcome letter?

21 A. Do I know of any specific complaint that they  
22 reviewed this?

1 Q. That they received this.

2 A. I would assume since -- at this point you  
3 haven't said whether it is in use. I would assume  
4 that it's been in use. I would have assumed that  
5 some customers would have received it.

6 Q. Do you know if any of them are the complaints  
7 that you have reviewed?

8 A. Well, there is over 2,000 complaints in the  
9 record. So it would be difficult for me to say,  
10 although I would say that the preponderance of all  
11 probability suggests that some have received this.

12 Q. But you don't know that, is that right?

13 A. I know based on probability. I don't know  
14 absolute certainty.

15 MR. MARKOFF: I would ask or request that the  
16 witness be directed to answer the question.

17 JUDGE ALBERS: I think he did.

18 MR. MARKOFF: I am asking if he knows.

19 JUDGE ALBERS: I think he just said with not  
20 absolute certainty.

21 Q. Do you know any percentage of the complaints  
22 that you have reviewed that have received this



1 letter?

2 A. I couldn't give you a figure.

3 MS. NORINGTON-REAVES: Point of clarification,  
4 did we establish the usage dates of that letter?

5 MR. MARKOFF: No, but it doesn't sound like it  
6 is necessary. The witness was free to testify that  
7 he thought that it was probable that those customers  
8 received this letter.

9 MS. NORINGTON-REAVES: It would also depend  
10 upon the point in time that we are referring to.  
11 Could we ask for a clarification providing him with  
12 these dates?

13 JUDGE ALBERS: Do you have that information?

14 MR. MARKOFF: I do, but I am not sure that I  
15 need to provide it. The witness didn't even qualify  
16 his answer. But I will gladly provide that. May I  
17 approach the witness?

18 JUDGE ALBERS: Yes.

19 Q. Mr. Kolata, can you tell me what is Bates  
20 stamped as SES ICC 040? Is that substantively the  
21 same as your Appendix 4?

22 A. I would want to read it.

1 Q. Take your time.

2 JUDGE ALBERS: While he is doing that, do you  
3 have any more estimate as to how much more cross you  
4 have?

5 MR. MARKOFF: To be perfectly honest, I have  
6 quite a bit.

7 JUDGE ALBERS: An hour?

8 MR. MARKOFF: (Nodded in the affirmative.)

9 Q. Have you had a chance to review that?

10 A. A cursory scan.

11 Q. Does it look like there is any substantive  
12 differences?

13 A. Based on that cursory scan, it appears to be  
14 the same.

15 Q. I am going to hand you the chart that many of  
16 you have been referencing here about dates of use  
17 and direct you to SES ICC 040. Can you tell is that  
18 a date of use of July 9 forward?

19 A. 040, yes, July 9.

20 Q. And knowing that that was put into use in July  
21 9 of 2002, does that change your prior testimony at  
22 all?

1 A. Can you ask me a specific question?

2 Q. Sure. Do you know if any of the complaints  
3 that you have reviewed thus far in relation to this  
4 proceeding, do you know if any of those customers  
5 received this welcome letter?

6 A. I would assume that, considering that Santanna  
7 claims that this has been in use since July 9, that  
8 some customers who complained have received this  
9 welcome letter.

10 Q. Beyond assumption, are you aware of it?

11 A. Well, I would assume.

12 Q. In that Appendix 4 is there anything in there  
13 that advises the customer that they will pay for the  
14 gas that is being delivered, even though it is being  
15 stored?

16 A. There is a sentence that seems to get across  
17 that point.

18 Q. And which sentence is that?

19 A. "Your summer bill should be significantly  
20 higher." Sorry, "Your summer bill should be  
21 significant" -- I assume that's a typo -- "higher  
22 than you are used to seeing."

1 Q. Is there another sentence in there that, I  
2 believe it's the fourth paragraph of that letter,  
3 the third sentence, which also happens to be on the  
4 third line, it starts "NICOR determines," do you see  
5 that sentence?

6 A. "NICOR determines the amount of gas"?

7 Q. Yes. Does that sentence go on to say that,  
8 "You," meaning the customer, "will be billed each  
9 month for the amount of gas delivered, regardless of  
10 the amount you use"?

11 A. It does.

12 Q. And so do you think this letter conveys the  
13 point that the customer will be charged for the gas  
14 delivered?

15 A. I think it starts to get across that point,  
16 yes.

17 Q. And do you think this letter conveys to the  
18 customer that their summer bills will be higher than  
19 they are used to seeing?

20 A. I think it starts to get across that point,  
21 yes.

22 Q. How does it just start to get across that

1 point?

2 A. Because, as I said previously, an adequate  
3 characterization would describe the really unique  
4 feature of this program which is the prepay, which  
5 is essential to making a rational choice on what  
6 kind of plan you go with.

7 Q. Didn't we just cover that it discloses that  
8 they will be billed each month for that, regardless  
9 of use?

10 A. It doesn't get to that point.

11 Q. Do you know what gas prices are going to be in  
12 September?

13 A. No, I do not.

14 Q. Do you know how much -- withdrawn. Do you know  
15 who decides how much gas gets delivered to customers  
16 in the Customer Select and Choices For You programs?

17 A. The utilities, I believe, NICOR and People's.

18 Q. Do you know when the utilities -- withdrawn.  
19 Do you know if alternative gas suppliers have any  
20 discretion in the amounts of gas they deliver?

21 A. It is my understanding that the amount  
22 delivered is determined by NICOR and People's.

1 Q. And then they advise the alternative gas  
2 suppliers how much to supply, is that your  
3 understanding?

4 A. How much to supply to storage?

5 Q. How much gas to deliver to a particular pool.

6 A. It is my understanding that the utilities  
7 determine how much gas goes into storage.

8 Q. Do you know when the utilities advise the  
9 alternative gas suppliers how much gas is supposed  
10 to be delivered?

11 A. Do I know exactly when? The actual amount?

12 Q. Yeah.

13 A. I do not.

14 Q. Directing your attention to page 9 of your  
15 testimony, line 13.

16 A. Just a second. Okay.

17 Q. Is it true that you concluded that Santanna's  
18 billing statements were not in compliance with the  
19 alternative gas supplier law?

20 A. Yes.

21 Q. Do you know if Santanna issues its own  
22 invoices?

1       A.    It's my understanding that Santanna determines  
2       its portion of the bill to be placed on NICOR's  
3       bill.

4       Q.    NICOR, as well as People's and North Shore?

5       A.    Yes, that's my understanding.

6       Q.    Do you know how much room Santanna has to put  
7       information on those bills?

8       A.    I believe I came across in your responses the  
9       figure of four lines, but I can't say for sure.

10      Q.    Do you have any other independent knowledge of  
11      what that space is?

12      A.    I do not.

13      Q.    Do you have any reason to doubt the truth of  
14      that statement, that limited line?

15      A.    Subject to checking it out for myself, I would  
16      be willing to stipulate to that.

17      Q.    Do you have any suggestions for improving  
18      Santanna's billing statements within those confines?

19      A.    Do I have any suggestions at all?

20      Q.    Yeah.

21      A.    I think that, you know, within the context of  
22      four lines you can do a much better job getting

1 across what it is people have to pay each month.  
2 For example, just by breaking out gas for storage  
3 and gas for consumption would go -- would help a  
4 lot, for example.

5 Q. Santanna does that with the People's bill,  
6 right?

7 A. It's my understanding they do.

8 Q. And is it also your understanding that Santanna  
9 has more space to work with on People's bills?

10 A. Based on what you submitted in the record, yes,  
11 and subject to checking for myself, I am willing to  
12 stipulate that that's the case.

13 Q. So do you have any other suggestions other than  
14 that for improving, say, the NICOR invoices?

15 A. What I would say is that the People's bill that  
16 Santanna issues, at least the ones that I reviewed,  
17 does a much better job than the NICOR bill, with the  
18 exception of the price per therm should be listed.  
19 So in general I think the NICOR bill should look  
20 more like the People's bill.

21 Q. Have you done an analysis at all -- do you know  
22 if it's even possible, if it is even feasible, to



1 list -- make it similar to the People's bill within  
2 the confines of 40 characters on three lines?

3 A. I would assume it is possible.

4 Q. Have you ever checked into it?

5 A. What do you mean by checked into it?

6 Q. Have you ever done an analysis to determine if  
7 that's possible?

8 A. I would assume it's possible.

9 Q. Have you ever done an analysis to determine  
10 that?

11 A. I have not done an analysis at this point, but  
12 I would assume it's possible.

13 Q. Referring you back to Appendix 4 of your  
14 testimony --

15 A. Hold on again. All right. Here I am.

16 Q. Could you please read the last sentence of  
17 paragraph 5?

18 A. Paragraph 5 starts with Pickup Storage.

19 Q. Correct.

20 A. Last sentence, "The storage level you start  
21 with each month is noted as BEG. The gas delivered  
22 to your account during the month is noted as FLOW.

1 Gas that is consumed from your account during the  
2 month is noted as USG. And your month end balance  
3 is noted as END."

4 Q. Referring to your testimony, page 9, line 16,  
5 the beginning of that sentence there says, "None of  
6 these terms is defined," do you see that?

7 A. Yes.

8 Q. And one of those terms presumably is, quote,  
9 BEG space FLOW space USG space END, end quote, is  
10 that right?

11 A. Uh-huh, yes.

12 Q. Santanna does define it in this welcome letter,  
13 right?

14 A. The point here is they don't refine it in the  
15 bill.

16 Q. You would acknowledge it does in the welcome  
17 letter?

18 A. There is a definition in the welcome letter.

19 Q. Your testimony, page 11, line about 13.

20 A. Okay.

21 Q. I take that back. Go down a couple more lines.  
22 You state that CUB has received a number of

1       troubling complaints stemming from slamming. Is  
2       that right?

3       A.     Yeah.

4       Q.     And do you have knowledge if those are just  
5       allegations?

6       A.     They are allegations.

7       Q.     Have you verified any specific instances of  
8       slamming?

9       A.     I think this relates to my answer earlier in  
10      the proceeding. I think certainly in the case of  
11      Mrs. E that's been shown to be the case.

12      Q.     Any other examples?

13      A.     Repeat the question.

14      Q.     Any other examples of --

15             MS. NORINGTON-REAVES: I am going to object to  
16      the question to the extent that it seeks to repeat  
17      information that he previously stated.

18             JUDGE ALBERS: Yeah, I am thinking the same  
19      thing at this point. I think I have heard this  
20      general notion here, the way these questions are  
21      going. Can you cut to the chase if you are making a  
22      point?

1           MR. MARKOFF: Judge, I would like at this time  
2 to play a video camera shortly. We will probably  
3 also have a customer's name on it, so.

4           JUDGE ALBERS: Do you have a transcript of  
5 this?

6           MR. MARKOFF: I do not have a transcript of  
7 this. I am sorry.

8           MS. NORINGTON-REAVES: Just for the record, can  
9 we have a description of what this is?

10          MR. MARKOFF: This is a Fox News story. I  
11 think everybody is aware of it because I referenced  
12 it, a segment featuring Santanna's clip from  
13 Danielle's Doghouse.

14          JUDGE ALBERS: Tell you what, we will watch it.  
15 Please provide a transcript of this so we have  
16 something to put in the record. I am not sure how I  
17 am going to put a video in the record otherwise, as  
18 far as it being readily available.

19          MR. LEINBERGER: But the court reporter will  
20 also be taking down a transcription.

21          JUDGE ALBERS: It just depends on the quality  
22 of the --

1           MR. MARKOFF: I am fine with just referencing  
2           that a tape was played and we will provide a  
3           transcript later.

4           JUDGE ALBERS: We will do that. Re-arrange  
5           yourselves, if you need to, to see this.

6           MS. NORINGTON-REAVES: Just off the record for  
7           one moment.

8           JUDGE ALBERS: Off the record.

9                       (Whereupon there was  
10                      then had an  
11                      off-the-record  
12                      discussion.)  
13                      (Whereupon a video tape  
14                      was played by Mr.  
15                      Markoff.)

16           MR. MARKOFF: I would like to play just the  
17           beginning of that again. And this time now, seeing  
18           what the gist of it is, tell me if you can tell --  
19           well, let me ask you this.

20           Q. Was there any misconduct by any of those -- any  
21           of the Santanna reps that you saw there on the  
22           video?

1           A.     What do you mean by saw?

2           Q.     The two sales people they were chasing around  
3           with a camera --

4           A.     Was there any misconduct?

5           Q.     Yeah.

6           A.     Not that I can think of.   Those two specific  
7           reps, they were right there.

8           Q.     And could you -- it's just the beginning of  
9           this one again.   Can you tell me if you happen to  
10          notice if one of them is wearing a badge, if one of  
11          them is wearing a pin similar to this one?

12          A.     Can you go back?

13          Q.     Yeah, sure.

14          A.     I would like you to freeze it.

15          Q.     And, further, if you can tell me if you see the  
16          gentleman mentioned in the story, if you could tell  
17          if this contract lists Santanna Energy's name on it?

18                 MS. NORINGTON-REAVES:   Can I ask what the  
19          relevance is of whether those gentlemen were wearing  
20          pins or whether that contract says that?

21                 MR. MARKOFF:   Because part of Mr. Kolata's  
22          testimony goes to people are going around saying

1       they work for NICOR and he extrapolates that into  
2       slamming everybody and he discusses slamming. The  
3       subject of this story is one of those people that  
4       states that he was slammed, and the contract plainly  
5       states Santanna on it.

6               MS. NORINGTON-REAVES: With respect to the  
7       allegations of people posing as NICOR  
8       representatives, I believe Mr. Gatlin has already  
9       acknowledged that there are plenty of allegations  
10      about that. We have already put that on the record.  
11      I don't understand at this point what we are trying  
12      to accomplish here. Go ahead.

13                       (Whereupon the video

14                       tape was played again.)

15               MS. NORINGTON-REAVES: Can we just stipulate to  
16      the fact that the contract that is on the table --  
17      did you see it, Your Honor?

18               JUDGE ALBERS: Yeah, I did.

19               MS. NORINGTON-NORINGTON-REAVES: Yeah, we will  
20      stipulate to that.

21               MR. MARKOFF: I would like a stipulation,  
22      however, that he claims that it wasn't disclosed.

1 JUDGE ALBERS: Is there something you need to  
2 see to answer that question? And what question is  
3 even pending?

4 MS. NORINGTON-REAVES: He asked me to stipulate  
5 to something I am not willing to stipulate to.

6 JUDGE ALBERS: You know, on the off chance a  
7 Commissioner wants to see this or hear that tape, do  
8 you have a copy of that, just on the off chance?

9 MR. MARKOFF: I am sorry, that who might?

10 JUDGE ALBERS: In case one of the Commissioners  
11 is interested in the actual video. I am not sure a  
12 transcript is really going to reflect that.

13 MR. MARKOFF: Well, this is the only copy we  
14 have.

15 JUDGE ALBERS: Well, if you want to copy that  
16 one, that is fine.

17 MR. MARKOFF:

18 Q. Mr. Kolata, do you agree that the gentleman  
19 referenced in that news story stated that he wasn't  
20 advised that he would be switching gas suppliers?

21 A. Yes .

22 Q. And did you see in that story a contract with



1 the Santanna Energy Services logo displayed on it?

2 A. There appears to be a contract with the SES  
3 logo.

4 Q. And although you of course couldn't read it in  
5 detail, but it looks similar to other contracts that  
6 you have seen in this proceeding?

7 A. The logo is similar.

8 Q. And would you agree that in not all cases that  
9 a customer thinks that they were misled, in not all  
10 cases is that true?

11 A. Would you repeat the question?

12 Q. Would you agree that it is not always true when  
13 a customer states that they are misled, that it is  
14 in fact the case?

15 A. Not in every single situation.

16 Q. How about the story on that Fox News channel?  
17 Did that appear to be just one of those situations?

18 A. Absolutely not.

19 Q. You acknowledge that there appeared to be a  
20 Santanna contract with its logo on there, is that  
21 right?

22 A. Yes.

1 Q. And yet the gentleman was claiming that he was  
2 not advised that Santanna was involved with that  
3 transaction?

4 A. What he says, he thought he was signing  
5 something from the energy company, from NICOR.

6 Q. Referring to your testimony, page 12, starting  
7 on line 2.

8 A. Yes.

9 Q. You testify here that most of the slamming  
10 customers stated that they have never had contact  
11 with Santanna, nor had they ever asked to switch  
12 service from their natural gas supplier to Santanna,  
13 is that right?

14 A. Yes.

15 Q. I have given you what's been marked for  
16 identification as Santanna Cross Exhibit 6.

17 JUDGE ALBERS: Is this already in the record,  
18 though, as an attachment to Mr. Gatlin's testimony?

19 MS. NORINGTON-REAVES: Yeah, it is. And  
20 actually he has that in front of him. It's a green  
21 tab in the back.

22 THE WITNESS: A green tab in the back.

1 JUDGE ALBERS: If there is any particular part  
2 of this tariff you want to direct his attention to,  
3 please do so, as opposed to him looking through it  
4 to find something.

5 THE WITNESS: I am looking for something in the  
6 NICOR tariff, is that correct?

7 MR. MARKOFF: Yes, specifically Sheet 75.9.1.

8 THE WITNESS: Give me a second to find this.  
9 All right. I found the NICOR tariff. What sheet  
10 now?

11 MR. MARKOFF: 75.9.1, the second to the last.

12 THE WITNESS: 75.9.1, I believe I found the  
13 page.

14 Q. Directing your attention to paragraph O.

15 A. Yes.

16 Q. It says, "Include as a minimum the following  
17 information for voice recorded customer contract."  
18 Included in that is, let's see, name and supplier,  
19 authorization of supplier as agent, pricing of  
20 natural gas, other charges, contract termination  
21 charges, customer name, account number and meter  
22 number. Do you see that?

1 A. Yes.

2 Q. Now, your testimony says that most of these  
3 customers claim to have never had contact with  
4 Santanna. How is it Santanna would get that  
5 information without ever having contact with the  
6 customer?

7 MS. NORINGTON-REAVES: Objection, calls for  
8 speculation.

9 Q. Do you know of any way that Santanna would be  
10 able to get that information without ever having  
11 contact?

12 A. Yes.

13 Q. What is that?

14 A. Bills have account and meter number.

15 Q. And how would Santanna get those bills?

16 A. There would be a variety of ways. You could  
17 intercept them in the mail, for example.

18 Q. Are you aware of any such instances that  
19 Santanna has done that?

20 A. I am aware that people have alleged that they  
21 have had no contact with Santanna and found  
22 themselves signed up with Santanna. I am also aware

1       that not all of the contracts you submitted in this  
2       proceeding all have account and meter numbers, that  
3       you have also switched people based on the last four  
4       digits of their social security number, and that,  
5       from what I understand, can be accessible to people  
6       without talking to a customer.

7       Q.     This refers to voice-recorded customer  
8       contracts, right?  Is that right?

9       A.     Yes, it does.

10       MS. NORINGTON-REAVES:  Counsel, I am going to  
11       object to any further use of this until the witness  
12       has had an opportunity to look at 75.9, because the  
13       paragraph that you just cited is really a portion of  
14       a sentence that is contained on the previous page.

15       MR. MARKOFF:  That's fine.  He can read it.

16       MS. NORINGTON-REAVES:  Okay.

17       Q.     Mr. Kolata, I am handing you what's been marked  
18       for identification as Santanna Cross Exhibit 6.  Is  
19       that -- do you know if that was a CUB complaint  
20       form?

21       A.     It is.

22       Q.     And could you tell me what the complainant is

1       alleging?

2       A.     Caller says he was solicited by Santanna over  
3       the phone in May, 2nd of May -- I don't know how to  
4       read that -- 2002.  He says he was promised savings  
5       on his residential gas bill so he asked for more  
6       info be sent to him.  He says he has been billed by  
7       Santanna, even though he never consented to any  
8       switch in supplier.  AG has told him that they would  
9       take care of it.  He does not feel he should pay  
10      Santanna anything.

11      Q.     Is this one of the complaints that you relied  
12      on in expressing your opinions in this proceeding?

13      A.     I have reviewed thousands of complaints in this  
14      proceeding.  My guess is that this is one of them,  
15      yes.

16      Q.     Would you deem the allegations in that CUB  
17      complaint to be a slamming complaint?

18      A.     To the extent that -- what slamming basically  
19      means is being switched against their will without  
20      consenting to it.  I would say this does fall under  
21      the category of slamming.

22      Q.     Mr. Kolata, I am going to play a tape here that

1 is Bates stamped SES ICC 205. I show you what's  
2 marked as Santanna Cross Exhibit 7, transcript, and  
3 if it's not correct, I am sure somebody will correct  
4 me.

5 (Whereupon an audio tape  
6 was played by Mr.  
7 Markoff.)

8 JUDGE ALBERS: All right. I am going to stop  
9 you right there. I can't tell what the hell that is  
10 saying. Without a transcript to tell whether this  
11 is an accurate reflection of what's on the tape, I  
12 can't tell.

13 MR. MARKOFF: We will try this one, Judge. I  
14 will withdraw that exhibit as well.

15 JUDGE ALBERS: Okay. Is this Number 6 then?

16 MR. MARKOFF: I think that's what I had marked  
17 it.

18 MS. NORINGTON-REAVES: So you are withdrawing  
19 both of them or just the transcript?

20 JUDGE ALBERS: The consumer inquiry was 6.

21 MR. MARKOFF: I will withdraw both, my apology.

22 JUDGE ALBERS: That's all right.

1                   (Whereupon Santanna  
2                   Cross Exhibit 6 was  
3                   marked for purposes of  
4                   identification as of  
5                   this date.)

6       Q.     Showing you what's been marked for  
7           identification as Santanna Cross Exhibit 6 in lieu  
8           of the other. Is that also a CUB complaint?

9       A.     Yes, it is.

10      Q.     And can you tell me what the complainant  
11           complains of?

12      A.     Caller does not remember ever authorizing a  
13           switch to Santanna. She is trying to get out of the  
14           program, and on her latest bill only paid for the  
15           therms she used. She paid her last bill in full and  
16           would like a refund for the extra therms for which  
17           she paid.

18      Q.     So would you agree that it is also a slamming  
19           complaint?

20      A.     It might be a slamming complaint. It might not  
21           be. Based on this, I am not sure you can tell.

22           JUDGE ALBERS: For the record, the customer is



1 VP.

2 Q. Would you agree that the customer complains  
3 that they do not remember authorizing a switch to  
4 Santanna?

5 A. The key question -- yes, I would agree with  
6 that.

7 (Whereupon Santanna  
8 Cross Exhibit 7 was  
9 marked for purposes of  
10 identification as of  
11 this date.)

12 Q. Hopefully, this one will work. Show you what's  
13 been marked for identification as Santanna Cross  
14 Exhibit 7, hopefully, a transcript of this case. If  
15 you could listen to the tape for me, please?

16 (Whereupon an audio tape  
17 was played by Mr.  
18 Markoff.)

19 JUDGE ALBERS: Any opinions on this one?

20 MS. NORINGTON-NORINGTON-REAVES: Pardon?

21 JUDGE ALBERS: Any opinions on this one?

22 MS. NORINGTON-REAVES: Well, a couple of little

1 things. On the second page the telemarketer did  
2 repeat the correct meter number. He did not say 88;  
3 he said 326. At the bottom portion of the page it  
4 said "telemarketer." He didn't say "all right." He  
5 said "okay." Other than that, it was garbled. But  
6 I think the rest of it, I couldn't discern any  
7 problems.

8 THE WITNESS: I think on the last page on the  
9 first full line for the telemarketer he said,  
10 "ma'am," at the end as well.

11 JUDGE ALBERS: Well, I agree it was garbled in  
12 places and there appeared to be a little more  
13 dialogue in a few places than what's on the  
14 transcript here.

15 MS. NORINGTON-REAVES: Particularly about the  
16 correct account number.

17 JUDGE ALBERS: Right. Any questions you wanted  
18 to ask regarding this?

19 MR. MARKOFF: Well, yeah, and I don't even need  
20 the transcript.

21 Q. I just want to ask Mr. Kolata, from listening  
22 to that tape, do you think that the customer

1           consented to sign up with Santanna?

2           A.    I guess I would say probably.  It's hard to  
3           tell.  There is a lot of strangeness going on in the  
4           conversation and there is some unanswered questions  
5           about, you know, who has authorization for the  
6           account, considering that it is E.... P....'s  
7           account.  But I think the answer is probably.

8           Q.    And we should probably change that to Mr. P  
9           perhaps.

10                MS. NORINGTON-REAVES:  P, yes.

11           A.    P, I am sorry.

12           Q.    Given that in the CUB complaint it states that  
13           she didn't remember signing up with Santanna, isn't  
14           it possible that some customers just don't remember?

15           A.    That is possible and that's -- and in this  
16           particular case that's, given the nature of this  
17           complaint, that's why I said it was unclear at the  
18           time whether or not it was a slamming complaint or a  
19           different kind of complaint.

20           Q.    I direct your attention to page 12 of your  
21           testimony, line 14.  You were asked --

22           A.    Just a second.  Line 14?

1 Q. In response to the question of whether Santanna  
2 employs financial incentives that could encourage  
3 slamming, you answered yes, is that right?

4 A. Yes, I did.

5 Q. Is that the same as concluding that Santanna's  
6 payment to marketers actually does encourage  
7 slamming?

8 A. I am saying that there is an incentive, that  
9 absent a thorough oversight, could lead, creates the  
10 conditions for, slamming.

11 Q. You also testified that at lines 18 and 19 --

12 A. Yes.

13 Q. That the company, to paraphrase, makes more for  
14 each successful switch, is that right?

15 MS. NORINGTON-REAVES: Sorry, you said lines 18  
16 and 19?

17 MR. MARKOFF: Yeah.

18 MS. NORINGTON-REAVES: What page are we on?

19 MR. MARKOFF: 12.

20 MS. NORINGTON-REAVES: Oh, I am sorry.

21 THE WITNESS: Can you repeat the question?

22 Q. In this paragraph you are talking about the

1       marketers, is that right, and their possible  
2       incentive to slam, is that right?

3       A.     I think that's a fair characterization.

4       Q.     And on lines 18 and 19, you talk about -- 17,  
5       18 and 19, the company makes more money for each  
6       successful switch, is that right?

7       A.     Yes.

8       Q.     On what do you base that testimony?

9       A.     It's my opinion that when people have an  
10      incentive to make more money, that they are more  
11      likely, absent strict supervision, to take unethical  
12      and misleading approaches to sign up customers.  
13      Money is an incentive.

14      Q.     Your reference, though, is to a successful  
15      switch, is that right?

16      A.     It is.

17      Q.     Okay. Do you know if Santanna's marketers get  
18      paid for a successful switch?

19      A.     From what I understand, they get paid for each  
20      successful sale.

21      Q.     Is a successful sale the same as a successful  
22      switch?

1       A.    I think, you know, in conventional language,  
2       yes, that is certainly the way I was meaning it.

3       Q.    Do you know if Santanna's marketers earned  
4       their fee each time a customer's account is  
5       switched?

6       A.    From what I understand, they get paid.  I can't  
7       recall how often.  They get paid maybe weekly when  
8       they turn in customers that have switched.  And that  
9       after "X" amount of time, you know, Santanna will  
10      finally consider that a switch worthy of full  
11      compensation.  So they pay them in advance, and then  
12      if it goes for beyond a certain amount of time, then  
13      they -- I don't know what the word I am looking for  
14      is -- but sort of the sale is -- well, there is no  
15      rebate necessary.

16                               (Whereupon Santanna  
17                               Cross Exhibit 8 was  
18                               marked for purposes of  
19                               identification as of  
20                               this date.)

21      Q.    Showing you what's been marked for  
22      identification as Santanna Cross Exhibit 8.  I refer

1       you, please, to page 2 of that.

2       A.     Uh-huh.

3       Q.     This is a response to a staff data request.

4       Would you agree that Santanna states that a  
5       successful sale is determined by a customer being a  
6       Santanna customer 60 days after the account is  
7       submitted to Santanna?

8       A.     It does. And it is my understanding that  
9       Santanna gives the money beforehand, and that the  
10      key question here really is what are the incentives  
11      for the individual sales associates. And that has  
12      yet to be determined.

13      Q.     A switch is -- my point here is a switch is not  
14      the same as a successful sale according to that  
15      definition?

16      A.     According to that definition, that is correct.

17      Q.     Your testimony, page 13, starting at line 21.

18      A.     Uh-huh.

19      Q.     You state that Santanna claims that these  
20      problems are due to an Ameritech service problem.  
21      Are you referring there to difficulty in customers  
22      reaching Santanna?

1       A.     Repeat the question.  I am not sure exactly  
2       what you said in there.

3       Q.     Do you see on lines 21 and 22 it says that  
4       while Santanna claims that these problems are due to  
5       an Ameritech service problem, this alleged service  
6       outage occurred in late July 2002 while CUB received  
7       complaints about not being able to contact the  
8       company as early as May?

9       A.     Yes.

10      Q.     And you refer to Appendix 7?

11      A.     Yes.

12      Q.     And that Appendix 7, is that an e-mail -- the  
13      original message, is that an e-mail from Mr. Gatlin  
14      to among other people --

15      A.     I need to find Appendix 7 here.  Just a second.

16             JUDGE ALBERS:  How many more questions do you  
17      have, Mr. Markoff?

18             MR. MARKOFF:  One page.

19             JUDGE ALBERS:  About 15 minutes?

20             MR. MARKOFF:  Sure.

21             JUDGE ALBERS:  Okay.

22             MR. MARKOFF:  Sorry, Judge, I have got to make



1 a record.

2 THE WITNESS: So you are talking about -- I am  
3 at Appendix 7.

4 Q. The original message there is a message from  
5 Mr. Gatlin and an e-mail to, among other people, Ms.  
6 Norington-Reaves?

7 A. Can you start reading it? I am not sure where  
8 you are.

9 Q. It says, "In the SES effort."

10 A. Okay. "To optimize customer service"?

11 Q. Is that what you are referring to as far as  
12 Santanna claiming that call center problems are due  
13 to an Ameritech service problem?

14 A. I believe that, you know, in part that is what  
15 we are relying on.

16 Q. It doesn't say anything about service  
17 disruptions prior to the date of the e-mail, though,  
18 does it?

19 MS. NORINGTON-REAVES: I am sorry, what's the  
20 "it" that you are referring to?

21 MR. MARKOFF: The e-mail, I am sorry.

22 Q. Mr. Gatlin's e-mail says nothing about service

1        disruptions affecting the handling of the calls  
2        prior to the date of the e-mail, does it?

3                JUDGE ALBERS:    I think these e-mails speak for  
4        themselves.

5                MR. MARKOFF:    Judge, I thought so too, but  
6        Mr. Kolata seems to rely on it for a different  
7        proposition than the e-mail says.    So I am just  
8        trying to figure out why.

9                JUDGE ALBERS:    Quickly, Mr. Kolata.

10               THE WITNESS:    Does it -- what is the question?  
11        I am sorry.

12        Q.     Does that e-mail in Appendix 7 reference any  
13        differences in handling calls prior to the date of  
14        that e-mail?

15        A.     Looking just quickly, not that I can tell.

16        Q.     Referring you to page 3 of your testimony, line  
17        22.

18        A.     Of my direct?

19        Q.     Your original.

20        A.     Original, line 3, line 22.

21        Q.     Page 3, line 22.

22        A.     Yes.

1 Q. And you refer to Santanna's current conduct  
2 there, is that right?

3 A. Yes.

4 Q. And, in fact, there is a few places around your  
5 testimony you refer to current conduct, right?

6 A. Yes.

7 Q. And you state, for example, failing to comply  
8 with laws, failing to adequately disclose. Are  
9 those two of the things?

10 A. Yes.

11 Q. Did you cite any current examples in your  
12 testimony?

13 A. What do you mean by current?

14 Q. Well, I am going on your work on line 22 on  
15 page 3. I ask you what did you mean by the word  
16 "current"?

17 A. In effect now.

18 Q. And what current conduct of Santanna  
19 demonstrates that it utilizes marketing and other  
20 informational materials that do not adequately  
21 disclose prices, terms and conditions of service?

22 A. As we have gone over before, I don't believe

1       the bills do an adequate job of disclosing. I don't  
2       believe any of your marketing materials, including  
3       your contracts, do an adequate job. I have reviewed  
4       the record and I just don't think they do an  
5       adequate job. They are not in compliance.

6       Q.     What alleged misconduct does Santanna currently  
7       engage in?

8       A.     Do you mean -- well, since you -- let me think  
9       about this question for a second because you have  
10      said that you stopped your marketing program. On  
11      the other hand, your latest versions of your  
12      contracts and welcome letters, I don't believe, are  
13      in compliance. So I would just restate my answer  
14      from before. I believe that your contracts that are  
15      latest additions of your contracts, your billing  
16      statements, your welcome letters, your other  
17      informational material, these aren't in compliance.  
18      And, you know, plus we have these serious slamming  
19      allegations that the company -- as I understand your  
20      argument, you believe that all of these slamming  
21      complaints were not necessarily fabricated but  
22      people just had a poor memory. And I don't see how

1       you can solve a problem if you don't recognize that  
2       it exists.

3               MR. MARKOFF:   Move to strike.   Non-responsive  
4       and mischaracterizing testimony.

5               JUDGE ALBERS:   Overruled.   Move on.

6       Q.     Mr. Kolata, can you tell me in CUB Cross  
7       Exhibit 15 what are the deficiencies in that  
8       material?

9       A.     Well, I think, number one, again, the  
10      description of the storage program isn't quite as  
11      good as I think is needed.

12      Q.     What is missing from it?

13      A.     Again, a description that what you are really  
14      doing here, the real uniqueness of the Santanna  
15      program, is a prepaid feature.   I have just skimmed  
16      this briefly, but I don't believe that it is  
17      expressed as well as it should be.

18      Q.     Do you see the underline in the paragraph  
19      entitled Quantity/Storage, the words "delivered" and  
20      "not"?   Can you read that sentence for me?

21      A.     "Buyer shall pay seller each month based on the  
22      gas delivered and not based on the quantity of gas

1       used."

2       Q.     Does that not advise the customer that they  
3       will be paying for the gas that's delivered and not  
4       used?

5       A.     It says that people will be paying for the gas  
6       delivered, but there is still -- again, the unique  
7       feature of this program is the prepay feature.  If  
8       there is going to be any benefits from it, that's  
9       where it's going to lie.  If there is going to be  
10      any downsides to it, it's going to be with the  
11      prepay feature, and that's not mentioned.

12      Q.     Page 6 of your testimony, supplemental  
13      testimony, I am sorry.

14      A.     Okay, thank you.  Okay, I am on page 6.

15      Q.     Down about line 20.

16      A.     Yes.

17      Q.     You referenced an e-mail sent by Lori Brosky at  
18      Santanna, is that right?

19      A.     Yes.

20      Q.     And that referenced -- that e-mail referenced a  
21      door-to-door sales person allegedly posing as a  
22      NICOR employee, right?

1 A. Yes.

2 Q. And you then conclude that Santanna may  
3 intentionally use such a strategy to defraud  
4 customers. Do you know whether Santanna actually  
5 did intentionally use such a strategy?

6 MS. NORINGTON-REAVES: I am sorry. Can we stop  
7 for a moment? I think I need to object to that on  
8 the basis of mischaracterizing his testimony. Where  
9 do you see that he says Santanna intentionally --

10 MR. MARKOFF: No, line 20, I asked, you then  
11 conclude that Santanna made intentional use of such  
12 a strategy to defraud customers. Do you see that?

13 MS. NORINGTON-REAVES: Why don't we read the  
14 statement? I don't think it's fair for you to  
15 interpret what he meant by it. Let's go with the  
16 statement that is on here. Have him read the lines.

17 Q. All right. On line 20 of your testimony you  
18 state, and correct me if I am wrong, please, first  
19 Ms. Brosky's e-mail suggests that Santanna may  
20 intentionally use the NICOR strategy to defraud  
21 customers, given that she describes it as a sales  
22 trick that may now be at the attention stage, do you

1           see that?

2           A.     Yes.

3           Q.     Is that your testimony?

4           A.     Yes.

5           Q.     And do you know whether Santanna actually did  
6           intentionally use such strategy?

7           A.     I don't know for absolutely certain, no.

8                   MR. MARKOFF:  I have nothing further at this  
9           time.

10                  MS. NORINGTON-REAVES:  Your Honor, I have 15  
11           minutes of cross which I can do in five minutes  
12           after a five-minute break.

13                  JUDGE ALBERS:  Wait a minute.  I have got  
14           Santanna Cross Exhibits 6, 7 and 8.  Six was the CUB  
15           consumer inquiry with VP.  Seven was that transcript  
16           of that most recent tape.  And eight is the DR  
17           response to DH 1.10.

18                  MR. MARKOFF:  You know, I didn't even have a  
19           copy of it.  Mr. Kolata has the copy.

20                  THE WITNESS:  6, 7 and 8?

21                  MR. MARKOFF:  Yes.  Do you have all of them?

22                  THE WITNESS:  I don't know.  I kind of fell



1       apart here.

2               MR. MARKOFF:   Yes, 6 was the CUB with VP.   7  
3       was the transcript; 8, yes.   I would move that  
4       Santanna Cross Exhibits 6, 7 and 8 be admitted.

5               JUDGE ALBERS:   Any objection?

6               MS. NORINGTON-REAVES:   No, Your Honor.

7               MR. KAMINSKI:   None.

8               JUDGE ALBERS:   All right.   6, 7 and 8 will be  
9       admitted.   There will be a confidential and public  
10      version of 6 and 7.

11                               (Whereupon Santanna  
12                               Cross Exhibits 6, 7 and  
13                               8 were admitted into  
14                               evidence.)

15               JUDGE ALBERS:   All right.   Five-minute break.  
16      I assume no one else had any cross.

17                               (Whereupon the hearing  
18                               was in a short recess.)

19               JUDGE ALBERS:   Back on the record.

20                               REDIRECT EXAMINATION

21               BY MS. NORINGTON-REAVES:

22      Q.    Mr. Kolata, there are just a few brief areas I

1       just want to revisit with you. Do you recall  
2       Mr. Markoff was questioning you with respect to your  
3       participation in working groups, particularly the  
4       Consumer Education Working Group?

5       A.    I do.

6       Q.    And you testified that you were responsible for  
7       developing materials with respect to that program  
8       for consumer education?

9       A.    I did.

10      Q.    Can you tell me the geographic area in which  
11      those materials were supposed to be used?

12      A.    They were used through pretty much the entire  
13      state.

14      Q.    Okay. Thank you. Now, do you still have the  
15      affidavits in front of you?

16      A.    Probably.

17      Q.    If you could find the affidavit of LB, I would  
18      appreciate it, as well as the customer complaint  
19      that Mr. Markoff presented you with.

20      A.    Can you just show me -- I am not sure if I can  
21      find it.

22      Q.    Well, it would look like one of these CUB

1 Consumer Inquiry forms, and I should have a copy.

2 Mr. Kaminski is going to provide you with a copy.

3 A. Thank you.

4 Q. Looking at the affidavit of LB, directing your  
5 attention there.

6 A. Just a second, let me see if I can find it.

7 Okay, I have it. Sorry about that.

8 Q. I am going to be standing next to you because I  
9 don't have copies. You have the affidavit?

10 A. Yes.

11 Q. Okay. Looking at the affidavit, paragraph 5,  
12 can you state what it says there?

13 A. It says, "The only thing that I signed relating  
14 to Santanna Energy Services was a sheet of paper  
15 with signature lines."

16 Q. And you testified earlier about customer  
17 complaints and such that you had reviewed. Is this  
18 consistent with any complaints that you have  
19 reviewed?

20 A. Yes, it is.

21 Q. And then directing your attention again to the  
22 affidavit of TC?

1 A. Just a second. Okay.

2 Q. Paragraph number 4, can you read that, please?

3 A. "I signed a paper that resembled a petition.

4 There were other signatures listed on it."

5 Q. Okay. Based upon your review of customer

6 complaints in this case to date, is this, that

7 sentence, those two sentences you just read,

8 consistent with the complaints that you have

9 reviewed?

10 A. They are consistent.

11 Q. And do you have any reason to doubt the

12 veracity of that affidavit?

13 A. No.

14 Q. Did you have anything to do with the obtaining

15 of that affidavit?

16 A. Of this specific affidavit?

17 Q. Yes.

18 A. Not that I can remember.

19 Q. And with respect to the previous one that you

20 just saw, did you have anything to do with obtaining

21 that one?

22 A. Again, not that I can remember.

1 Q. Moving onto Santanna Cross 6, VP?

2 A. I have VP.

3 Q. You read a statement that says, "Caller does  
4 not remember ever authorizing a switch to Santanna,"  
5 correct?

6 A. Yes, I did.

7 Q. And Mr. Markoff questioned you with respect to  
8 the verification and the transcript. Can I ask your  
9 opinion based upon listening to the verification and  
10 based upon reading this transcript, do you think it  
11 was possible for this customer to not remember  
12 authorizing the switch to Santanna?

13 A. It's a very convoluted discussion. I think  
14 that is possible. It is also noticeable, I think,  
15 that listening to a lot of the tapes, people are  
16 elderly, appear to be elderly, at least. And  
17 obviously as we all get older, our memory gets  
18 worse.

19 Q. Let me ask you, in this document directing your  
20 attention to the second telemarketer entry, it says,  
21 "I am calling about verification from Santanna  
22 Energy Services"?

1       A.     Can you --

2       Q.     Sorry, do you have the transcript?  I am trying  
3       to move as quickly as possible.

4       A.     Yes.

5       Q.     It says, "I am calling about verification from  
6       Santanna Energy Services regarding the NICOR  
7       Customer Select Program?

8       A.     Yes, I see that.

9       Q.     Okay.  Going a little bit further down,  
10      "telemarketer" about the third entry from the  
11      bottom, "And you are the person authorized to enroll  
12      your account in the NICOR Customer Select Program,"  
13      do you see that?

14      A.     Yes.

15      Q.     Turn the page.  "Telemarketer," the middle of  
16      the page, "Sorry about that.  Okay, you are now  
17      enrolling in NICOR Customer Select Program."  Do you  
18      see that?

19      A.     Yes, I do.

20      Q.     Next entry, "You will continue to receive a  
21      bill from NICOR like you always have," do you see  
22      that?

1 A. Yes.

2 Q. Last section, last sentence actually, last  
3 line, "It will be Santanna Energy Services that will  
4 provide NICOR with all of the natural gas." Next  
5 line, "NICOR will continue to make the natural gas"  
6 -- I am sorry, "to deliver the natural gas to you"?

7 A. Yes.

8 Q. Next line, "You will make your payments as  
9 always to NICOR"?

10 A. Yes.

11 Q. Do you think it's possible, based upon what you  
12 have just read in that verification there, that that  
13 customer was not necessarily clear that she was  
14 speaking with the Santanna representative?

15 A. Yes, there is a lot of mention of NICOR.

16 Q. And just based upon your review just looking at  
17 this document here, which do you see referenced more  
18 often, Santanna or NICOR?

19 A. It appears, just giving a cursory glance, that  
20 NICOR is mentioned more than Santanna.

21 Q. One or two times more, disproportionately more?

22 A. I would have to --

1 Q. Okay. Quickly just count, if you could.

2 (Pause)

3 A. By my quick count, NICOR is mentioned twice  
4 more than Santanna.

5 MS. NORINGTON-REAVES: Okay. Thank you. I  
6 apologize. I don't have a copy of this. I didn't  
7 know I was going to need to use this document. I  
8 will get a copy for you tomorrow. Counsel, it is  
9 page 2 of Exhibit 1 which is Santanna's responses to  
10 CUB's first set of data requests, just for the  
11 record.

12 MR. MARKOFF: Sorry, page 2 of Exhibit 1,  
13 counsel?

14 MS. NORINGTON-REAVES: Uh-huh, page 2 of  
15 Exhibit 1. Just for the record, this is a response  
16 to the following request. "Please provide copies of  
17 the signed service contracts between Santanna and  
18 the following individuals attached as Exhibit 1 to  
19 this response."

20 JUDGE ALBERS: And that's the list of  
21 customers?

22 MS. NORINGTON-REAVES: Right. It was a list of



1 customers who had claimed to have been slammed.

2 JUDGE ALBERS: Okay. Are you having that  
3 marked as something?

4 MS. NORINGTON-REAVES: I will. I only have one  
5 copy. I apologize.

6 JUDGE ALBERS: Go ahead.

7 Q. Do you recall watching the video of Danielle  
8 Sareno's Doghouse?

9 A. Yes, I do.

10 Q. Do you remember the name of the customer?

11 A. L.... T....

12 Q. Can you tell me if you see Mr. T....'s name  
13 anywhere on that list? I am sorry, LT. Can you  
14 tell me if you see Mr. T's --

15 (Laughter)

16 Can you tell me if you see Mr. T's name  
17 anywhere on that list?

18 A. I do see Mr. T's name.

19 Q. And can you tell me what the notation is, the  
20 response from Santanna, with respect to Mr. T?

21 A. Unknown person.

22 MS. NORINGTON-REAVES: Thank you.

1 JUDGE ALBERS: Can you describe what unknown  
2 person means?

3 MS. NORINGTON-REAVES: We didn't provide these  
4 responses. Santanna did. I will show you the full  
5 thing.

6 JUDGE ALBERS: Is that in a column with a  
7 particular label at the top of it? That's just what  
8 I am asking.

9 MS. NORINGTON-REAVES: This is how the response  
10 is provided to us.

11 Q. Just for clarification sake, you mentioned  
12 something about the PGA. Can you just -- you don't  
13 have to define it but state what it is, please.

14 A. It's the, I believe, the purchase gas  
15 adjustment. It's NICOR. It's essentially how they  
16 charge for gas. It's the price they charge for gas,  
17 regulated price they charge for gas each month.

18 Q. So it's not just NICOR; it is also People's  
19 Gas, isn't that true?

20 A. Yes, it is all utilities.

21 Q. Okay. Earlier, you and Mr. Markoff had a  
22 discussion about Santanna's storage program, and I

1 believe he asked you -- he asked you, I believe, if  
2 Santanna was required to purchase a certain amount  
3 of requirements for customers. I am sure that I  
4 have paraphrased that poorly.

5 MR. MARKOFF: I didn't even catch it, to be  
6 honest.

7 Q. Earlier with Mr. Markoff you had a discussion  
8 about storage and the requirements of storage with  
9 respect to Santanna vis-a-vis NICOR?

10 A. Yes.

11 Q. And you have heard testimony here today that  
12 Santanna is required to deliver to customers a  
13 particular amount of gas per NICOR's instructions,  
14 is that correct, or delivered to NICOR, that is, I  
15 am sorry?

16 A. Yes, delivered to NICOR.

17 Q. Do you know if Santanna, based on those  
18 tariffs, is similarly required to bill for storage  
19 at the time of purchase?

20 A. It is my understanding they are not.

21 Q. Do you know if any other alternative gas  
22 supplier has that requirement?

1 A. It is my understanding that they do not.

2 Q. Okay. Also you have looked at a number of  
3 welcome letters and contracts, and you expressed an  
4 opinion as to whether they are compliant with  
5 Article 19?

6 A. Uh-huh.

7 Q. In reviewing the latest contracts and the  
8 latest welcome letter from Santanna, do you have an  
9 opinion as to the compliance of those documents?

10 A. I would say that they are better than the  
11 previous contracts and welcome letters.

12 Q. And do you have any -- strike that. But the  
13 previous letters and previous contracts were used to  
14 sign up a fair amount of customers, is that your  
15 understanding?

16 A. Yes, that's my understanding.

17 Q. And will the letters that are in place now do  
18 anything to rectify any misunderstandings that may  
19 have existed as a result of previous letters and  
20 contracts?

21 A. No, it would not.

22 Q. Question about billing, you testified earlier

1       that you have experience in dealing with billing  
2       space or space on billing statements, is that  
3       correct?

4             MR. MARKOFF:  Objection, mischaracterizes his  
5       testimony.

6       Q.    Okay.  Have you previously testified in any  
7       other proceeding regarding billing statements or  
8       space on billing statements?

9       A.    Yes, I have.

10      Q.    With respect to the People's gas bill -- I am  
11      sorry, with respect to the NICOR gas bill, you made  
12      some suggestions as to how to improve it, is that  
13      correct?

14      A.    I believe I did, yes.

15      Q.    And do you think that the -- I am sorry, do you  
16      recall what your suggestions were?

17      A.    In the case of the NICOR bill?

18      Q.    Yes.

19      A.    I believe I generally suggested it should be  
20      more like a People's bill.

21      Q.    Can you tell me the exact phrases you used?

22      A.    That gas storage should be broken out from gas

1 usage.

2 Q. And do you have any reason to believe that the  
3 terms "gas storage" and "gas usage" could not be fit  
4 into three -- I am sorry, three lines with 40  
5 characters?

6 A. I do not.

7 MS. NORINGTON-REAVES: I am done.

8 JUDGE ALBERS: Recross?

9 MR. MARKOFF: If I could just see, you flipped  
10 something over and I had a question about that.  
11 What exhibit was that?

12 MS. NORINGTON-REAVES: I am not sure. I know  
13 Cross 6 was the person VP.

14 RECROSS EXAMINATION

15 BY MR. MARKOFF:

16 Q. Mr. Kolata, on Santanna Cross Exhibit 7?

17 A. Yes.

18 Q. You were questioned on the prevalence of the  
19 word NICOR versus Santanna, is that right?

20 A. Yes, I was.

21 Q. Is there any statement in there where NICOR  
22 appears that is false?

1 A. Where NICOR appears?

2 Q. Yes.

3 MS. NORINGTON-REAVES: Objection, relevance.

4 JUDGE ALBERS: I will allow it.

5 A. Just reading this quickly, I don't see one.

6 Q. And wouldn't it be appropriate to advise the  
7 customer of how the program works and some of that  
8 may involve NICOR, isn't that right?

9 A. Yes. I think the point here is just that, you  
10 know, that Santanna certainly should be mentioned  
11 more than NICOR. It is after all Santanna they are  
12 signing up with.

13 MR. MARKOFF: I have nothing further.

14 JUDGE ALBERS: All right. Thank you.

15 (Witness excused.)

16 We will resume tomorrow at 9:00 o'clock.

17 And with regard to the motions to strike that  
18 Mr. Markoff may make, we can take care of that  
19 tomorrow morning. And did you want to have this  
20 marked as something?

21 MS. NORINGTON-REAVES: Yeah. You know what,  
22 you can have that one. I will get another copy of

1           it.

2           JUDGE ALBERS: Well, we are still on the  
3 record, people. Are you marking this as something,  
4 though?

5           MS. NORINGTON-REAVES: Yes, CUB Redirect 1.

6           JUDGE ALBERS: Redirect 1. Moving for  
7 admission?

8           MS. NORINGTON-REAVES: Moving for admission?

9           JUDGE ALBERS: Is there any objection?

10          MR. MARKOFF: No objection.

11          JUDGE ALBERS: CUB Redirect 1 is admitted and  
12 there will be a confidential -- well, heck, it will  
13 all be confidential.

14                       (Whereupon CUB Redirect  
15                       1 was marked for  
16                       purposes of  
17                       identification as of  
18                       this date and admitted  
19                       into evidence.)

20           Any other questions? Okay. Tomorrow  
21 morning, 9:00 o'clock.

22                       (Whereupon the hearing



1                   in this matter was  
2                   continued until August  
3                   29, 2002, at 9:00 a.m.  
4                   in Springfield,  
5                   Illinois.)